Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 81–159)

Bonds

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds), Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: May 29, 1981.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
Braniff Airways, Inc., d.b.a. Braniff International, World Headquarters, Braniff Blvd., Dallas/Fort Worth Airport, TX; Aetna Casualty & Surety Co. (PB 2/26/77) D 5/1/81 [1]	May 1, 1981	May 1, 1981	Dallas/Fort Worth, TX $200,000
The foregoing principal has been designated as a carrier of bonded merchandise.			
Department of International Affairs, General Administration of Civil Aviation of China, 477 Madison Ave., New York, NY; American Home Assurance Co.	Mar. 17, 1981	Apr. 14, 1981	J.F.K. Airport, NY $100,000
The foregoing principal has not been designated as a carrier of bonded merchandise.			
Federal Express Corp., Box 30167, Memphis, TN; Safeco Ins. Co. of America.	Jan. 26, 1981	Mar. 20, 1981	New Orleans, LA $100,000
The foregoing principal has been designated a carrier of bonded merchandise.			
Iran National Airlines Corp., 345 Park Ave., New York, NY; National Union Fire Ins. Co. of Pittsburgh, PA D 12/26/79	Apr. 17, 1979	Apr. 23, 1979	J.F.K. Airport, NY $100,000

[1] Principal is Braniff Airways, Inc., d.b.a. Braniff International, and Braniff International Airways; Surety is Federal Ins. Co.

(BON–3–01)

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 81–160)

(19 CFR 101)

General Provisions

Amendments to the Customs regulations relating to the field organization of the Customs Service

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document: (1) changes the field organization of the Customs Service, by (a) consolidating the Houston and Galveston, Texas, Customs districts (Region VI) and consolidating the Customs ports of entry of Houston and Galveston in the new Houston-Galveston district and (b) transferring jurisdiction over Morris County, New Jersey, from Region III, Baltimore, Maryland, to Region II, New York, New York; and, (2) clarifies the geographical boundaries of the Port Arthur Customs port of entry (Region VI).

Consolidating the Customs districts will significantly reduce administrative salaries and expenses without impairing services to area businesses or to the general public. Consolidating the ports of entry will simplify vessel entry and clearance procedures and reduce overtime expenses and paperwork for all parties involved. The other changes merely conform the Customs Regulations to changes previously made.

EFFECTIVE DATE: 30 days from the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Renee DeAtley, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

HOUSTON-GALVESTON, TEXAS

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, the Customs Service published a notice of proposed rulemaking in the Federal Register on December 16, 1980 (45 FR 82665), proposing to consolidate: (1) the Houston, Galveston, and Port Arthur, Customs districts under the Houston district; and, (2) the Galveston and Houston ports of entry in the new Houston-Galveston district.

Inasmuch as the three districts are located near one another and perform similar services, it was estimated that the proposed con-

solidation would significantly reduce administrative salaries and expenses without impairing Customs ability to provide services to area businesses or to the general public.

Because vessels moving between Galveston and Houston must enter and clear Customs at both ports of entry, as required by 19 U.S.C. 1443 and 1444, it was anticipated that consolidation of the ports would allow vessels to enter and move between various locations along the 43-mile stretch of the channel between Galveston and Houston by entering and clearing at either port. In addition, under the single-port concept, merchandise unladen at Galveston destined for Houston could arrive at Galveston, be shipped to Houston without bond, and be entered for Customs purposes at Houston. Importers also could make entry at Houston and pick up merchandise at Galveston.

It was anticipated that the proposed consolidation also would reduce penalties incurred if carriers failed to enter and properly clear merchandise being shipped between Galveston and Houston; reduce overtime because carriers frequently traveled between the ports outside normal business hours; and reduce paperwork for carriers, importers, and Customs because of the reduction of penalty cases and after hour entries.

The notice of proposed rulemaking invited interested parties to submit comments regarding the proposed changes on or before February 17, 1981. In response, approximately 60 comments were received from individuals, Members of Congress, maritime brokers, shippers and agents, customhouse brokers, chambers of commerce, port commissioners, labor unions, municipalities, banks, truckers, warehouse operators, and trade associations.

A majority of the commenters favor the proposal. They are of the opinion that the proposal will eliminate unnecessary paperwork, make it easier to move ships and cargo within the consolidated port, simplify vessel clearance and entry procedures, reduce penalties involved by moving vessels and cargo between separate ports, enhance trade flow throughout the area without adversely affecting any parties, streamline the internal operations of Customs, save manpower and tax dollars, and generally provide more efficient service to the shipping and importing communities. They believe that the advantages accruing from the changes will outweigh the disadvantages.

Those commenters opposing the proposal argue that it will not offer the advantages claimed and that the same goals can be achieved without the consolidation.

Many of the commenters oppose the inclusion of the Port Arthur district in the combined Houston-Galveston district.

After further review, Customs has determined that, at this time, it is not in the public interest to include Port Arthur in the combined

Houston-Galveston Customs district. Accordingly, the proposal is being modified to retain Port Arthur as a separate district. However, Customs will continue to monitor the workload at Port Arthur and study the possibility of including it in the combined district at some other time.

Certain commenters express the opinion that the quality and quantity of service will be reduced without a corresponding savings in paperwork, money, and resources, and that the proposal will be costly and inconvenient for Customs and the public.

No evidence has been presented to indicate that the quality and quantity of service will be reduced. Presently, several positions are devoted solely to the administration of the district and do not directly serve the public. Following the consolidation, the salaries and expenses of these positions could be saved and the employees could be transferred to other positions directly serving the public. Further, Customs does not anticipate that the change will result in additional costs either to it or to the public.

Other commenters question whether consolidation of the districts will simplify entry and clearance procedures.

As stated in the notice of December 16, 1980, entry and clearance procedures will be simplified under the proposed consolidation of the *ports* of entry of Galveston and Houston. The *district* consolidation will not affect entry and clearance procedures.

Some commenters are of the opinion that the proposal would hinder growth in the area.

Customs does not agree. By making the consolidation, Customs will be able to respond more effectively to changing work loads and to requests for additional Customs service by reassigning personnel to locations where demands for service have increased significantly. Increased staffing depends upon the availability of additional manpower and these districts now must compete with other districts for scarce resources and manpower. By pooling manpower, Galveston and Houston could meet future demands for additional services without additional resources.

Certain commenters believe that consolidation of the Houston and Galveston ports of entry will not work. They state that the ports will lose control over vessels and merchandise entering in the consolidated port, creating additional paperwork, expense, and delays for importers receiving merchandise because paperwork would be processed in one location and the goods entered at another.

Customs does not anticipate that port consolidation will create more paperwork or increase costs for importers. Vessels now must enter and clear at both Galveston and Houston, making it necessary to prepare the paperwork for entering and clearing at each stop. An

entry fee also is collected at both locations. Following consolidation, the fee will be collected only once. Merchandise and vessel control will be no different at the Houston-Galveston consolidated port than at any other similar sized port handling the same volume of business.

Several commenters request that, following consolidation, Customs maintain separate port Codes for the Houston and Galveston ports of entry.

To facilitate accurate recordkeeping within the consolidated port of entry, each port will retain its port number.

Customs has determined to adopt the proposal with the above noted modifications. Accordingly, the Houston and Galveston, Texas, districts are consolidated into a single Houston-Galveston, Texas, Customs district and the Customs ports of entry of Houston and Galveston, Texas, are consolidated in the new Houston-Galveston, Texas, Customs port of entry.

The district limits of the Houston-Galveston district include all of the area in the existing Houston and Galveston districts. The port limits of the combined Houston-Galveston port encompass the territory within the present Houston and Galveston port limits.

MORRIS COUNTY, NEW JERSEY

On May 9, 1978, Customs published a document in the Federal Register (T.D. 78–130, 43 FR 19832) changing the field organization of the Customs Service to, among other things, transfer jurisdiction over Morris County, New Jersey, from Region III, Baltimore, Maryland, to Region II, New York, New York. However, the conforming change was not made to the Customs Regulations. To properly reflect the change, the Customs Regulations now must be amended.

PORT ARTHUR DISTRICT BOUNDARIES

The list of Customs districts in Region VI, in the table of Customs regions, districts, and ports of entry in section 101.3(b), Customs Regulations (19 CFR 101.3(b)), indicates that all of Chambers County is included in the Galveston district. However, from the time of its establishment as the Sabine Customs collection district in 1906, the western district boundary of Port Arthur has included the area south along the east boundary of Liberty County to the Gulf of Mexico which encompasses a portion of Chambers County between the Liberty County border extended to the Gulf of Mexico and the Chambers/Jefferson County border. Since the implementation of Executive Order No. 2702, on September 7, 1917, the remainder of Chambers County has been included in the Galveston District.

To clarify the district limits of both Port Arthur and Galveston, it is necessary to amend the description of the Port Arthur district limits to read as follows:

> That part of the State of Texas from Sabine Pass North along the State line to the north boundary line of Shelby County; west to the Neches River; down the western shore of said river to the north boundary of Jefferson County; westerly along said boundary to the east boundary of Liberty County; south along the east boundary of Liberty County to the Gulf of Mexico, encompassing that portion of Chambers County between the Liberty County border extended to the Gulf of Mexico and the Chambers/Jefferson County border; also the parishes of Cameron and Calcasieu in the State of Louisiana.

Changes in the Customs Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (46 FR 9336), the following changes in the Customs field organization are adopted:

1. The Houston and Galveston, Texas, Customs districts are consolidated into a single Houston-Galveston, Texas, Customs district. The limits of the consolidated district include all of the territory currently in the Houston and Galveston, Texas, districts (the combined port of Houston-Galveston including territory described in T.D. 54409—Port Bolivar, and Texas City), Corpus Christi, Freeport, and Port Lavaca-Point Comfort, all in the State of Texas.

2. The Customs ports of entry of Houston and Galveston, Texas, are consolidated in the new Houston-Galveston, Texas, Customs district. The port limits of the consolidated port encompass Galveston, Texas, including Port Bolivar and Texas City, Texas, and the area within the present Houston, Texas, limits including territory described in T.D. 54409.

3. Jurisdiction over Morris County, New Jersey, is transferred from Region III, Baltimore, Maryland, to Region II, New York, New York.

4. The geographical boundaries of the Port Arthur, Texas, Customs port of entry are clarified to read as follows—"That part of the State of Texas from Sabine Pass north along the State line to the north boundary line of Shelby County; west

to the Neches River; down the western shore of said river to the north boundary of Jefferson County; westerly along said boundary to the east boundary of Liberty County; south along the east boundary of Liberty County to the Gulf of Mexico, encompassing that portion of Chambers County between the Liberty County border extended to the Gulf of Mexico and the Chambers/Jefferson County border; also the parishes of Cameron and Calcasieu in the State of Louisiana."

AMENDMENTS TO THE REGULATIONS

To reflect these changes, the following modifications are made to section 101.3(b), Customs Regulations (19 CFR 101.3(b)):

1. The list of Customs districts and ports of entry in Region VI, Houston Texas, is amended to read as follows:

Name and headquarters	Area	Ports of entry
Houston-Galveston, Texas	That part of the State of Texas lying south of lat. 32° N. and that part of the State of Texas lying east of long. 97° W. except the territory included in the Port Arthur district.	Houston-Galveston, Tex., including territory described in T.D. 54409 and Port Bolivar and Texas City (T.D. 81-——). Corpus Christi (E.O. 8288, including territory described in T.D. 78-130). Freeport (E.O. 7632). Port Lavaca-Point Comfort, Tex. (T.D. 56115).

2. In the column headed "Area" in Region II, New York City, New York, "Morris," is inserted between "Sussex" and "Passaic."

3. The following is inserted in the column headed "Area" in the Port Arthur, Texas, Customs district: "That part of the State of Texas from Sabine Pass north along the State line to the north boundary line of Shelby County; west to the Neches River; down the western shore of said river to the north boundary of Jefferson County; westerly along said boundary to the east boundary of Liberty County; south along the east boundary of Liberty County to the Gulf of Mexico, encompassing that portion of Chambers County between the Liberty County border extended to the Gulf of Mexico and the Chambers/Jefferson County border; also the parishes of Cameron and Calcasieu in the State of Louisiana."

347-182 O - 81 - 2

EXECUTIVE ORDER 12291

Because this will not result in a "major" rule as defined by section 1(b) of Executive Order 12291, the regulatory impact analysis and review prescribed by section 3 of the Executive Order is not required.

INAPPLICABILITY OF REGULATORY FLEXIBILITY ACT

This document is not subject to the provisions of sections 603 and 604 of Title 5, United States Code (as added by section 3 of Pub. L. 96–354, the "Regulatory Flexibility Act"), because it was the subject of a notice of proposed rulemaking published in the Federal Register before January 1, 1981, the effective date of the Act.

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: May 28, 1981.

JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register June 2, 1981 (46 F.R. 29462)]

(T.D. 81–161)

Customs Approved Public Gauger

Approval of public gauger performing gauging under standards and procedures required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Commodity Control Services Corporation, 170 Broadway, New York, New York 10038, to gauge imported petroleum and petroleum products in the Customs Districts of New York, Houston, and New Orleans in accordance with the provisions of section 151.43 of the Customs Regulations is approved.

Dated: May 29, 1981.

ANTHONY L. PIAZZA,
Director, Entry Procedures and Penalties Division.

[Published in the Federal Register June 9, 1981 (46 F.R. 30616)]

(19 CFR Part 134)

(T.D. 81–162)

Notice of Specific Country-of-Origin Marking Requirements for Imported Anchors

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of specific country of origin marking requirements for imported anchors.

SUMMARY: Customs has learned that the country of origin on imported anchors, classified under item 652.03, Tariff Schedules of the United States, is sometimes marked by means of paint stenciling. Typically, anchors are stored outdoors and are subject to weathering which causes the paint stenciled marking to either be washed off or become obscured due to rust. This document gives notice that, with certain specified exceptions, anchors shall be permanently and legibly marked with the country of origin by die stamping, raised lettering, or an equally permanent method of marking.

DATES: This ruling shall be effective as to merchandise entered, or withdrawn from warehouse, for consumption on or after (90 days from date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: James Bartley, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304 (a)), provides that every imported article of foreign origin, or its container, shall be legibly and conspicuously marked to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. That section also authorizes the Secretary of the Treasury to require specific methods of marking articles.

Part 134 of the Customs Regulations (19 CFR Part 134), sets forth the regulations implementing the country of origin marking requirements of 19 U.S.C. 1304(a), together with certain marking provisions of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). Section 134.42, Customs Regulations (19 CFR 134.42), provides that specific methods of marking merchandise with its country of origin may be required by the Commissioner of Customs in accordance with 19 U.S.C 1304(a), and that notices of

such rulings shall be published in the Federal Register and the Customs Bulletin.

Customs has learned that the country of origin marking requirements are not being applied uniformly to imported anchors, classified under item 652.03, TSUS. Sometimes, the name of the country of origin on these articles is marked by means of paint stenciling. Generally, anchors are stored outdoors and are subject to weathering which causes the paint stenciled markings to either be washed off or become obscured due to rust.

Permanent marking of imported anchors is needed to insure that an ultimate purchaser in the United States will be aware of the country of origin of the articles. Further, it appears that often when anchors are imported, they are "used" rather than new articles and that some of the anchors are of United States origin. In these cases, permanent markings will aid Customs officers in establishing whether used anchors imported into the United States are entitled to an exemption from the payment of duty as products of the United States.

SPECIFIC METHOD OF MARKING REQUIRED

To provide for uniformity of application of the country of origin marking requirements of 19 U.S.C. 1304, and to clarify those marking requirements, imported anchors shall be marked with their country of origin as follows:

1. Anchors, imported individually or in bulk by a distributor for resale to ultimate purchasers in the United States, shall each be permanently and legibly marked with the country of origin by die stamping, raised lettering, or an equally permanent method of marking. Anchors which are marked with the name of a location in the United States also shall be marked with the name of the country of origin preceded by, and in close proximity to, words such as "Made in," "Product of," or other words of similar meaning. This marking must be permanent and legible and in letters of comparable size as the name of the location in the United States.

2. There are two exceptions from the general country of origin marking requirements stated above for imported anchors, which are *not* marked with the name of a location in the United States—

(a) If the anchors are ordered directly from a foreign supplier by a contractor or other ultimate purchaser in the United States who will use them and not offer them for resale, and if Customs

is satisfied that the anchors were made in the country named in the invoice, they may be excepted from country of origin marking under 19 U.S.C. 1304(a)(3)(H).

(b) If the anchors are imported directly from a foreign supplier by a carrier, vessel owner, or shipbuilder, for use by the importer and not intended for sale in its imported or any other form, the anchors may be excepted from country of origin marking under 19 U.S.C. 1304(a)(3)(F).

AUTHORITY

This notice is being published in accordance with section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), and section 134.42, Customs Regulations (19 CFR 134.42).

DRAFTING INFORMATION

The principal author of this document was Barbara E. Whiting, Regulations and Information Division, Office of Regulations and Rulings (566–8237). However, personnel from other offices of the Customs Service participated in its development.

Dated: June 1, 1981.

JACK T. LACY,
Acting Commissioner of Customs.

[Published in the Federal Register June 8, 1981 (46 FR 30338)]

(T.D. 81–163)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: June 1, 1981.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Air Cargo Services, Inc., P.O. Box 30961, Raleigh, NC; air carrier; United States Fire Ins. Co.	July 29, 1980	Apr. 20, 1981	Wilmington, NC $25,000
Broward Air Freight Terminals, Inc., P.O. Box 28816, Ft. Lauderdale, Fla.; motor carrier; Peerless Ins. Co. D 4/15/81	Apr. 15, 1976	Apr. 23, 1976	Miami, FL $25,000
Circle B Transportation of North Dakota, P.O. Box 207, Wheatridge, CO; motor carrier; Northwestern National Ins. Co. of Milwaukee, WI.	Mar. 18, 1981	Apr. 14, 1981	El Paso, TX $25,000
Commercial Transfer Moving and Storage Co., 901 E. Glendale Ave., Sparks, NV; motor carrier; The Aetna Casualty & Surety Co.	Jan. 20, 1981	Mar. 27, 1981	San Francisco, CA $25,000
Domtar Inc., 6789 Airport Rd., Malton, Ontario, Canada; motor carrier; The Continental Ins. Co.	Aug. 1, 1980	Apr. 10, 1981	Buffalo, NY $50,000
Fall River & New Bedford Express Co., Inc., Ridge Hill Rd., Assonet, MA; motor carrier; The Continental Ins. Co.	May 29, 1980	Mar. 27, 1981	Boston, MA $50,000
Forge Village Transportation Co., Inc., 39 Central Ave., Ayer, MA; motor carrier; The American Ins. Co.	Mar. 6, 1981	Mar. 26, 1981	Boston, MA $50,000
Hawks Express, Inc., 32 Jacobus Ave., S. Kearny, NJ; motor carrier; Washington International Ins. Co.	Apr. 3, 1981	Apr. 8, 1981	Newark, NJ $50,000
Alvin Haynes Trucking Co., 1225 W. High St., P.O.B. 1635, Lexington, KY; motor carrier; U.S. Fidelity & Guaranty Co.	Feb. 3, 1981	Apr. 15, 1981	Cleveland, OH $50,000
Jet Air Freight & Parcel Delivery, Inc., P.O.B. 9313—Baer Field, Fort Wayne, IN; motor carrier; American States Ins. Co.	Dec. 31, 1980	Apr. 6, 1981	Chicago, IL $30,000
Kopak, Inc., d/b/a K-Cartage Corp., 4320 N.W. 72nd Ave., Miami, Fla.; motor carrier; St. Paul Fire & Marine Ins. Co.	Sept. 30, 1980	Mar. 31, 1981	Miami, FL $25,000
Keystone Airfreight Express, Inc., 119 McLaughlin Run Rd., Coraopolis, PA; motor carrier; St. Paul Fire & Marine Ins. Co.	Mar. 18, 1981	Apr. 2, 1981	Philadelphia, PA $25,000
J. F. Lomma, Inc., 125 Adams St., S. Kearny, NJ; motor carrier; Investors Ins. Co. of America	Apr. 20, 1981	Apr. 28, 1981	Newark, NJ $50,000
Mid-Western Transport, Inc., P.O.B. 3763, Santa Fe Springs, CA; motor carrier; St. Paul Fire & Marine Ins. Co.	Nov. 27, 1979	Dec. 11, 1979	Los Angeles, CA $50,000
Port East Transfer, Inc., Pulaski Highway and 68th St., Baltimore, MD; motor carrier; Fidelity & Deposit Co. of MD (PB 2/9/79) D 4/8/81	Mar. 3, 1981	Apr. 8, 1981	Baltimore, MD $25,000
Ram Rod Trucking, P.O. Box 707, Marrero, LA; contract carrier; The Aetna Casualty & Surety Co.	Mar. 24, 1981	Mar. 24, 1981	New Orleans, LA $50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
J.P. Reynolds Co., Inc., P.O. Box 13071, Fort Lauderdale, Fla.; motor carrier; St. Paul Fire & Marine Ins. Co.	Apr. 6, 1981	Apr. 13, 1981	Miami, FL $25,000
Robahlee Carter Trucking Co., P.O.B. 1508, Reidsville, NC; motor carrier; St. Paul Fire & Marine Ins. Co.	Apr. 15, 1981	Apr. 15, 1981	Wilmington, NC $25,000
Eluterio Rodriguez, Jr., P.O.B. 142, Edinburg, TX; motor carrier; Fidelity & Deposit Co. of MD	Nov. 9, 1979	Apr. 14, 1981	Laredo, TX $25,000
Silver Wheel Freightlines, Inc., 1321 S.E. Water Ave., Portland, OR; motor carrier; Peerless Ins. Co. D 6/3/81	Mar. 28, 1979	Apr. 5, 1979	Portland, OR $25,000
State Wide Trucking, Inc., 955 Dairy Ashford, 202, Houston, TX; motor carrier; National Surety Corp.	Mar. 26, 1981	Mar. 31, 1981	Houston, TX $50,000
Transcold Express, Inc., P.O. Box 61228, Dallas, TX; motor carrier; Hartford Accident & Indemnity Co. (PB 5/13/78) D 4/7/81 [1]	Dec. 18, 1980	Apr. 7, 1981	Chicago, IL $50,000

[1] Principal is Trans-Cold Express, Inc.; Surety is National Bonding & Accident Ins. Co.

(BON-3-03)

MARILYN G. MORRISON
Director,
Carriers, Drawback and Bonds Division.

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

The following are decisions made by the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the Customs Bulletin.

DONALD W. LEWIS,
Director,
Office of Regulations and Rulings.

Date: January 7, 1981
File: WAR-1-CO:R:CD:D L 212445

(C.S.D. 81-151)

Subject: Bonded Warehouse: Liability of the importer of record for merchandise stored in a class 2 customs bonded warehouse.

DISTRICT DIRECTOR OF CUSTOMS,
Chicago, Illinois.

DEAR SIR: This protest was filed against your decision in the liquidation of warehouse entry No. 111606 of February 3, 1969, at the Port of Chicago. The protest concerns the liability of the importer of record for merchandise stored in a Class 2 Customs bonded warehouse.

Issue: Is the importer of record liable for duties on merchandise entered but not found in a Class 2 Customs bonded warehouse?

Facts: Thirty cases of carbons were entered for warehouse in a Class 2 Customs bonded warehouse by the importer of record and protestant. The protestant states that it did not, to its knowledge, authorize or make any withdrawals against the warehouse entry. It further states that since the Customs Service has no record of withdrawals against the warehouse entry, it would appear that the merchandise was disposed of without the knowledge of either Customs or the protestant.

The protestant contends that the warehouse proprietor should be liable under its Proprietor's Warehouse Bond rather than the

importer of record under the Warehouse Entry Bond and requests reliquidation of the warehouse entry and refund of $493.05 duties paid.

Law and analysis: A substantially similar issue was ruled upon in C.I.E. 686/59 of May 4, 1959 (copy attached). That decision points out that under the Tariff Act of 1930, as amended, the consignee of the merchandise is regarded for Customs purposes as the owner of the imported merchandise and as such owner is liable for the duties thereon. Section 563 of the Tariff Act affords no relief from the payment of such duties in the case of merchandise stolen from the warehouse, nor is it possible to shift the responsibility for such duties to the warehouseman from whose warehouse the merchandise was stolen.

It further points out that the Government has an independent action for the payment of liquidated damages against the proprietor of the warehouse under the terms of the Proprietor's Warehouse Bond when it finds his duties as a warehousemen have not been faithfully performed. However, resort is had to such action only where the evidence is clear that the proprietor was negligent in not meeting his responsibility as a warehouseman.

In the present case there is no allegation of theft of the merchandise, only that the merchandise could not be accounted for. Neither is there any allegation or evidence of negligence on the part of the warehouse proprietor.

In the absence of clear evidence of negligence of the part of the warehouseman, it is our opinion that the consignee of merchandise entered for warehouse but not found remains liable for duty thereon.

Holding: Without clear evidence of negligence on the part of the warehouse proprietor, the importer of record is liable for duties on merchandise entered but not found in a Class 2 Customs bonded warehouse. This protest, therefore, should be denied in full.

(C.S.D. 81–152)

Subject: Aircraft: Report of arrival requirements for U.S. military aircraft arriving foreign with retired military personnel traveling in space available status.

Date: January 8, 1981
File: AIR–6–01–CO:R:CD:C
104705 PH

This ruling concerns the requirements applicable to military aircraft arriving in the United States carrying, on a space-available basis, retired military personnel and dependents on home leave.

347-182 O - 81 - 3

Issue: What Customs requirements are applicable to military aircraft arriving in the United States with space-available passengers, consisting of retired military personnel and dependents on home leave, who have paid a $10.00 processing fee.

Facts: The inquirer states that United States military aircraft have been carrying space-available passengers who are charged $10.00 "as a fee for processing". These passengers are retired military personnel and dependents on home leave who "are not on official business or orders". The inquirer has requested our advice concerning the application of report of arrival and entry requirements to such aircraft arriving in the United States from a foreign port.

Law and analysis: Section 6.1(d), Customs Regulations, defines the word "aircraft", as used in Part 6, Customs Regulations, as,

> . . . any aircraft not used exclusively in the governmental service of the United States or a foreign country, and includes any government-owned aircraft engaged in carrying persons or property for commercial purposes.

In applying this provision to government aircraft carrying passengers, we have ruled that an aircraft is used in the governmental service when the passengers are carried "in the interest of or for the government" (ruling letters MS 233.11 P, July 29, 1969, and AIR–4–07–R:CD:C 101556 F, September 12, 1975).

It is our opinion that the transportation, on a space-available basis, of retired military personnel and dependents on home leave is "in the interest of or for the government". (See, Department of Defense Regulations on Air Transportation Eligibility, January 1980 (DOD 4514.13–R), Chapter 4; see also, *Watt* v. *United States*, 246 F. Supp. 386, 388 (1965), in which the Court stated, "It is not disputed that a retired soldier, continues in the military service of the Government . . .").

In the case under consideration, the passengers were required to pay a $10.00 processing fee. In our opinion, this is a nominal fee and does not result in the carrying of persons for commercial purposes provided for in the last clause of section 6.1(d).

Accordingly, because the aircraft under consideration do not come within the definition of "aircraft" in section 6.1(d), Part 6 is not applicable. In ruling letter AIR–4–07–R:CD:C 101556 F, September 12, 1975, we were asked what provisions would be applicable if Part 6 were not applicable. We ruled that the aircraft would be subject to the provisions of section 4.5(a), Customs Regulations.

Under section 4.5(a), no report of arrival or entry is required, but the master or commander must file a declaration, as provided for in section 148.72, Customs Regulations, and, if any cargo passengers are on board, he also must file a manifest of any cargo and a list of any passengers and their baggage, as provided for by section 4.5(a).

Holding: Pursuant to section 4.5(a) Customs Regulations, United States military aircraft arriving in the United States with space-available passengers, consisting of retired military personnel and dependents on home leave who are not on official business or under orders, are not required to make a report of arrival or entry, whether or not the passengers have paid a $10.00 processing fee, but are required to file the declaration and manifest provided for in that section.

Effect on other rulings: Ruling letter AIR–6–01–RRUCDC 104705 PH, September 12, 1980, is revoked.

(C.S.D. 81–153)

Drawback: Chemical Milling of Titanium Offcuts Constitutes Manufacturing Under 19 U.S.C. 1313(a)

Date: January 8, 1981
File: DRA–1–09–CO:R:CD:D
212371 SMC

Issue: Are chemically milled titanium offcuts "manufactured or produced" under section 313(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(a))?

Facts: Imported titanium in the form of sheets or offcuts, offcuts being any portion of an entire sheet, are subjected to a chemical milling process whereby the titanium pieces are decreased in gauge to customer's specifications by a controlled chemical dissolution with suitable chemical reagents or etchants. Metal may be removed from the entire piece or may be selectively removed by etching only that portion which is not protected from the chemical attack by a mask. The dissolution may be preceded by a cleansing process and is normally followed by a rinsing procedure. The chemically milled titanium offcuts are then ready for export.

A reduction in the gauge of the titanium offcuts of as little as ten-thousandths of an inch increases their value significantly. A failure to reduce the gauge to the proper customer's specifications can result in the rejection of the product. The reduction in gauge and consequently the weight reduction increases design capability and flexibility in the fabrication of parts for aircraft and space vehicles. Without such a reduction, the offcuts would not be suited for such an industry.

Law and analysis: Section 313(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(a)) requires the use of imported merchandise in the manufacture or production of the exported articles.

"Manufacture" has been defined for customs purposes in *Anheuser-Busch Brewing Association* v. *United States*, 207 U.S. 556 (1907), where the Supreme Court stated:

> There must be a transformation; a new and different article must emerge, "having a different name, character, or use."

The fact that an exported product does not have a distinctive name different from that of the imported product, as in the instant case, does not preclude there being a manufacture or production. As the Customs Court stated in *United States* v. *International Paint Co.*, 35 C.C.P.A. 87, 93 (1948):

> "the requirements of change of name, character, or use given in the definition are stated in the disjunctive."

The *Anheuser-Busch* requirements that a manufactured article have a different character and use are satisfied when an imported article which is not suited for a commerical use is further manufactured into one that is suited for a commercial use. An imported article may be useful in a general sense, but not for the particular purpose intended. Manufacture or production is defined in terms of fitness for a particular use. In *International Paint Co.*, *supra* at page 94, for example, the court stated that:

> "proof that there was a change in character is found in the fact that the exported product was fitted for a distinctive use for which the imported product was wholly unfit . . ."

Holding: The chemical milling of titanium offcuts constitutes a manufacture under section 313(a) of the Tariff Act of 1930 as amended (19 U.S.C. 1313(a)).

(C.S.D. 81–154)

Date: January 9, 1981
File: VES–13–18–CO:R:CD:C
104440 JL

Subject: Vessels: Denial of remission of duties assessed under 19 U.S.C. 1466 on foreign repairs resultant of a single act of negligence.

The subject Protest is taken against your liquidation of certain repairs accomplished in Gibraltar on the (vessel name) in March, 1977, as dutiable pursuant to 19 U.S.C. 1466. A petition for remission of duties was filed by the owner of the vessel on March 1, 1978, following the denial by you of its application for remission on February 14, 1978. The petition was reviewed by this office, and a memorandum denying relief was forwarded to you on April 28, 1978.

The owner filed a Request for Reconsideration on July 11, 1978. In a ruling to you dated February 14, 1979, the Assistant Commis-

sioner, Regulations and Rulings, after reviewing the Request for Reconsideration, affirmed this office's decision of April 28, 1978.

The record discloses that the entry in question was liquidated on August 10, 1979, and that the Protest was filed on November 6, 1979.

Briefly stated, the damage to the vessel was caused by the failure of someone in the crew to close valves in the ballast system. The open valves allowed water to flood the engine room. The flooding allowed debris to enter the engine oil tanks. The contamination of the oil led to the failure of the vessel's engines while steaming from Israel and forced it to put into Gibraltar for repairs. The owner's petition for remission states that ". . . the ship's officers were negligent in opening valves in the ballast system". This factual pattern was not controverted in the Request for Reconsideration and, except for specifically identifying the two negligent parties as a junior engineering officer and an unlicensed member of the crew, is not varied in the Protest.

The Protestant's position is as follows:

> (1) An analysis of Customs rulings on the subject of negligence of ships' officers discloses that continuing acts or patterns of neglect were present in all cases denying relief, rather than single incidents, such as occurred in this case.
>
> (2) The policy considerations in applying section 1466 will not be thwarted by finding a remissible casualty in this or any case where a single unforeseeable act of negligence led to damage.

In other words, the Protestant urges us to modify that part of the "rule" expressed in both denials which states that the single act of negligence of the officer is sufficient to deny relief, that is, a finding of "other casualty" under 19 U.S.C. 1466(d)(1).

Regarding (1), the cases cited by Protestant all were decided utilizing the so-called "doctrine of unforeseeability" first enunciated in CIE 488/47. The test at that time was whether or not the negligent act or acts (or the damages resulting therefrom) could have been foreseen and guarded against by the ship's officers in a given case. This approach was abandoned as conclusive in determining whether an occurrence which is not the consequence of extrinsic force is a casualty in the holding in CIE 1161/62. CIE 1077/59, decided before the foreseeability doctrine was abandoned as conclusive, discussed single acts of negligence, as opposed to continuing negligence, and concluded that a single act would *not* qualify as a casualty unless the act could not have been foreseen and guarded against by the ship's officers. This serves to rebut the argument that the rule in (vessel name) was a departure from previous Customs policy. There also is a line of cases decided subsequent to CIE 1161/62 and prior to (vessel name) which holds that

single negligent acts of ships' officers preclude relief under the "other casualty" provision of 19 U.S.C. 1466(d)(1). (B/L January 4, 1972, case 199101; H/L April 28, 1977, case 102602; H/L January 14, 1977, case 102046; H/L November 18, 1977, case 102708; B/L May 17, 1972, case 198891).

With regard to the policy questions raised by the Protestant, similar arguments were presented in his July 11, 1978, Request for Reconsideration. The single act of negligence rule nevertheless was affirmed by the Assistant Commissioner, Regulations and Rulings, in his February 14, 1979, decision. The rule was again stated with approval in a decision to the Regional Commissioner at San Francisco dated August 25, 1980 (case 104542), by the Director, Office of Regulations and Rulings. In our opinion, these decisions clearly establish the single act of negligence rule in the (vessel name) case as the policy of the Customs Service in this area.

The issue of whether the single act of negligence of a ship's officer is remissible under Section 466 of the Tariff Act has not been decided by the Courts. However, in the 1977 case of *Suwannee Steamship Company* v. *United States* (C.D. 4708), the Customs Court did observe in the penultimate paragraph of its opinion that it was reasonable for Customs to conclude that the single negligent act of the vessel's chief engineer in failing to flush the fresh water tanks while in port did not justify remission under the "other casualty" provision of the statute.

For the reasons stated, you are directed to deny the Protest. Please inform the Protestant of our decision.

(C.S.D. 81–155)

Entry: Failure To Produce Missing Documents for Conditionally Free Merchandise

Date: January 9, 1981
File: ENT–1–14 RRUEE
713580 JB

This ruling concerns a request for internal advice concerning the failure to produce missing documents for conditionally-free merchandise after expiration of the bond period and the time for filing protests after liquidation of the entries as dutiable.

Issue: May or may not a claim for relief be granted and an entry reliquidated within one year of the date of liquidation (19 U.S.C. 1520(c)(1)) when a customhouse broker, as the importer of record, repeatedly does not produce missing documents to support claims for conditionally-free goods until after liquidation of the entry and expiration of the time period for protest (90 days; 19 U.S.C. 1514).

Facts: A broker, as importer of record, enters conditionally-free merchandise under bond to produce missing documents to support the claim for free entry (the declaration and superseding bond of the actual owner are not filed with Customs). The entries are liquidated by Customs as dutiable and the claim for free entry is treated as abandoned upon expiration of the bond period to produce the missing documents. Further, the missing documents are not filed before the time in which liquidation becomes final (90 days; 19 U.S.C. 1514). Subsequently, often 6 months after the expiration of time when the liquidation became final, the documents are presented to Customs under claims for relief pursuant to 19 U.S.C. 1520(c)(1). Reasons supplied by the broker for late filing or document failure are characterized by the district director of Customs as insubstantial.

Law and analysis: 19 U.S.C. 1514 in pertinent part permits a protest to be filed against decisions as to the classification and appraised value of merchandise if filed within the stated time limits.

19 U.S.C. 1520(c)(1) permits reliquidation of an entry to correct a clerical error, mistake of fact, or inadvertence, not amounting to an error in the construction of a law, if the claim is timely made (within 1 year from the date of liquidation or exaction).

19 CFR 10.112 provides in pertinent part that:

> Whenever a free entry . . . document . . . required to be filed in connection with the entry is not filed at the time of entry or within the period for which a bond was filed for its production, but failure to file it was not due to willful negligence or fraudulent intent, such document . . . may be filed at any time prior to the liquidation of the entry, or if the entry was liquidated, before the liquidation becomes final. . . .

19 CFR 10.172, for free entry pursuant to GSP (Generalized System of Preferences), contains provisions and time limits similar to 19 CFR 10.112 but, in addition, provides for the filing of a certificate of origin, or a duplicate thereof, as constituting the written claim for duty-free treatment of goods when the claim for free entry was not made at the time of entry.

Where a customhouse broker, as a matter of practice and in the judgment of the district director of Customs, presents a claim for relief pursuant to 19 U.S.C. 1520(c)(1) and does not present substantial information that failure to file missing documents within the period provided in 19 CFR 10.112 (after expiration of the time for protest of the liquidation and the bond period for production of the missing documents (19 CFR 113.43(c) and 172.22(c)), the district director may deny the claim and refuse to reliquidate the entry. It is evident from the information supplied that the failure to supply the missing documents for free entry for the Customs

transactions is not due to inadvertence, but constitutes negligent inaction. Consequently, the broker's claim for relief under 19 U.S.C. 1520(c)(1) may be denied. The time limits in 19 CFR 10.112, in effect, restrict the claimant's recourse.

Holding: A claim for relief for inadvertent failure to produce missing documents for conditionally free merchandise (19 U.S.C. 1520(c)(1)), made within 1 year after liquidation of the entry as dutiable, shall be denied when an importer or a customhouse broker, as the importer of record, engages in an evident practice of requesting refunds in this manner. The records and reasons for the document failures for each entry are not supported in substance and constitute willful inaction by the importer of record.

(C.S.D. 81–156)

Classification: Wood Molding and Turnings Used in Construction of Baby Beds

Date: January 21, 1981
File: CLA–2:CO:R:CV:G
065523 AL

DISTRICT DIRECTOR OF CUSTOMS,
Mobile, Alabama

DEAR SIR: This is in response to request for Internal Advice No. 205/79, dated August 6, 1979, and received in this division November 3, 1980. The merchandise is standard wood molding, and certain wood turnings, all used to construct cribs, that is, baby beds.

Facts: The imported pieces of wood, such as top rails, bottom rails, posts and spindles, do not constitute all the parts for a crib. While some pieces may be imported in specific lengths and patterns, they are further sanded, stained and painted. Of submitted samples described as wood spindles and wood side posts, all are wood spindles in material form. Additional manufacturing processes must be performed to use the spindles as crib parts. In the condition as imported, the spindles have various uses for architectural and furniture decoration. Top and rails and corner returns are used as crib (furniture) parts without further manufacturing process.

Issue: Whether the wood turnings, moldings and dowels are classifiable as parts of furniture, of wood, under item 727.40, Tariff Schedules of the United States (TSUS), or, in the appropriate item number of the tariff schedules, that is, item 202.64 (standard wood moldings), item 202.66 (other wood moldings, and wood carvings and ornaments suitable for architectural or furniture decoration), and items 200.91, 200.93, and 200.95 (wood dowel rods).

Law and analysis: The wood pieces, as imported, do not constitute an unfinished article because the importations do not constitute a substantially complete article.

The individual turned spindles can be used for multiple purposes. Also, additional processes have to be performed on these pieces before they can be used for furniture parts.

The top end rails and corner returns are used as parts of cribs without further manufacturing processes.

The term "standard wood moldings" as used in items 202.62 and 202.64, TSUS, embraces moldings used to construct cribs for children, and other furniture. (T.D. 71–83(29)).

Holding: (1) The wood spindles, including the side posts, are classifiable under the provision for other wood moldings, and wood carvings and ornaments suitable for architectural or furniture decoration, in item 202.66, TSUS. The rate of duty is 8 percent ad valorem. The rate of duty is 7.5 percent ad valorem on January 1, 1981. Also, this merchandise may be subject to duty free treatment under the Generalized System of Preferences (GSP), if it meets eligibility requirements.

(2) The top end rails and corner returns are classifiable as other parts of furniture, of wood, in item 727.40, TSUS, dutiable at the rate of 8.5 percent ad valorem. This merchandise also may be subject to duty free entry under GSP.

(3) Wood dowels which must be further processed for use as crib parts are classifiable in the appropriate item number of TSUS. If advanced in condition, tariff classification would be under item 200.95, TSUS, dutiable at the rate of 15.6 percent ad valorem, to be reduced to 14.4 percent ad valorem January 1, 1981.

(4) Those pieces which are within the purview of "standard wood moldings," and of Ramin wood, are classifiable under item 202.64, TSUS, and can be entered free of Customs duty.

(C.S.D. 81–157)

Subject: Classification: Ovaltine classifiable as an edible preparation and not malted milk or an article of milk for tariff purposes.

Date: January 22, 1981
File: CLA–2:CO:R:CV:G
064070 JH

This is in reference to your inquiry concerning the classification of an Ovaltine product reportedly containing 80 percent of malted milk, which is being imported into New York and San Francisco.

The product in question is apparently one which is produced in England and by (Corporate Name) with a trade name "Ovaltine."

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It is packed in one-pound tins, and contains information in both Chinese and English. It is stated on all the invoices that this is a Chinese formulation for export to the far east markets. When imported into the United States it is intended for the ethnic market.

The composition of Ovaltine is given as 66 percent of malt extract, 18 percent milk powder, 10 percent cocoa powder and 3 percent sugar.

The question is whether their Ovaltine in question is a malted milk or an article of milk within the meaning of item 118.30, Tariff Schedules of the United States (TSUS), and, therefore, subject to quota.

Malted Milk is said to be made with one pound of milk to 1.25 pounds of malt extract, while Ovaltine is about 3.66 pounds of malt extract to one of milk. Consequently, it is not believed that Ovaltine is formulated in a proportion that even approximates malted milk for tariff purposes. Furthermore, from the cost breakdown provided, it appears that the component of chief value is the cocoa powder.

Accordingly, the product in question, being neither a malted milk nor an article of milk for tariff purposes, is not subject to quota. It might be noted that in 1959 Customs ruled that a product called Ovaltine was classifiable in paragraph 708, Tariff Act of 1930, as a compound, mixture or substitute for milk or cream. No such provision is in the tariff under the current law.

Ovaltine, with composition as given above, in 1-pound tins, for retail sale is classifiable under the provision for edible preparations, not especially provided for, in item 183.05, TSUS. The rate of duty is 10 percent ad valorem.

(C.S.D. 81–158)

Subject: Classification: Fluorescent pigments.

Date: January 22, 1980
File: CLA–2 CO:R:CV:G
065965 JH

Your letter of December 22, 1980, concerns the classification of fluorescent pigments.

You state that 97% of the product is composed of para-toluene, sulphonamide, melamine, and para-formaldehyde. You believe that the product is similar to "Luminophores" as described in the Brussels Nomenclature.

Products of the type described are classifiable under the provision for other colors, dyes, stains, and related products: colorlakes and toner of benzenoid derivation in item 410.34, TSUS. The rate of duty is 18% ad valorem.

(C.S.D. 81–159)

Subject: Conditions constituting violation of 46 U.S.C. 251(a) (the Nicholson Act) when foreign-flag vessels engage in the transshipment of fish products.

Date: January 26, 1981
File: VES–7–02–CO:R:CD:C
VES–7–03/7–05
104779 MKT
104912
104522

Your letters of June 30 and October 10, 1980, ask that we reconsider our ruling of May 2, 1980, that a foreign-flag vessel which receives fish on the high seas, in the fishery conservation zone (16 U.S.C. 1811), from United States-flag catching vessels, and then transships the fish to another foreign-flag vessel, for direct exportation, in the territorial waters of the United States, would be in violation of the Nicholson Act, title 46, United States Code, section 251(a), second sentence.

Specifically, you argue that the transshipment of fish from one foreign-flag vessel to another would not constitute a "landing", and that a transshipment in the territorial sea outside the area you assert anyone could construe to be a port would not be in a "port of the United States", within the meaning of the Nicholson Act. In addition, you request other legal bases which might prohibit a transshipment of fish from one foreign-flag vessel to another in the territorial sea. You also request our views on the meaning of the word "unlade", the geographical scope of the term "elsewhere", and the definition of "entry" and "port of entry" within the purview of 19 U.S.C. 1447.

Under the activity you contemplate, United States vessels would transship fish they caught in the fishery conservation zone to a foreign-flag vessel on the high seas. The foreign-flag vessel would then transport the fish to United States territorial waters, specifically Dutch Harbor, Alaska, where the vessel would transship the fish to a Dutch-flag vessel, the (vessel name) for direct exportation.

To respond to your questions in detail, it is necessary to review the history of section 4311 of the Revised Statutes and the Nicholson Act ("the Act"). Section 4311, codified as the first sentence of 46 U.S.C. 251(a), which antedates the Act, reserves the privileges of vessels employed in the American fisheries to properly documented vessels built in the United States and owned by United States citizens. R.S. 4311 has been interpreted by Customs, at least since 1943, to preclude a vessel employed in fishing, other than a vessel of the United States, or a vessel of less than five net tons owned by a U.S. citizen or by an alien resident in the United States, from coming into a port *or place* in

the United States except to secure supplies, equipment, or repairs, or if in distress, unless authorized to do so by a treaty or convention (19 CFR 4.96(b), in effect since 1943; *see* T.D. 52880). In addition, R.S. 4311 has been interpreted, at least since 1924, to prohibit the transshipment of fish taken on the high seas by a foreign-flag fishing vessel to another vessel within the three mile limit.

The purpose of the Act, which became effective in 1950, is to strengthen R.S. 4311 by prohibiting a foreign-flag fishing vessel from proceeding to a foreign port, there exchanging its document for that of a cargo vessel, and then proceeding to the United States to market its catch taken on the high seas. There is nothing in the legislative history of the Act to reflect an intention by the Congress to limit R.S. 4311, as interpreted by the Customs Service or its predecessor agency, the Department of Commerce, by restricting its application to an area which does not encompass the territorial waters of the United States or by adding to the purposes for which a foreign-flag fishing vessel may enter U.S. territorial waters.

By its terms, the Act prohibits a foreign-flag cargo or other vessel from landing in a port of the United States fish or fish products processed therefrom taken or received on the high seas. Since 1974, the Customs Service has interpreted the Act to prohibit any foreign-flag vessel from transshipping fish taken or received on the high seas, or fish products processed therefrom, whether or not for export, to another vessel within United States territorial waters.

In order to apply the Act consistently with our previous administration of R.S. 4311 and the interpretation of R.S. 4311 by our predecessor agency, the Department of Commerce, we must apply the Act to the same activities when performed by any type of foreign-flag vessel. Therefore, we find that the transshipment described above is prohibited whether made by a foreign-flag fishing or cargo vessel.

In support of our interpretation that the geographical scope of the Act includes territorial waters, we rely on the definition of "port" in section 101.1(l), Customs Regulations, which was in effect in substance prior to the passage of the Nicholson Act (*see* section 1.1, Customs Regulations of 1943). Section 101.1(l) defines "port" to include a Customs district. In Alaska, the district, Number 31, comprehends the territory of the State of Alaska (section 101.3(b), Customs Regulations). The State of Alaska includes its territorial waters (48 U.S.C. ch. 2). (*See also* sections 4.6(b) and 101.1(b), Customs Regulations).

"Territorial waters", as defined by the Coast Guard in 33 CFR 2.05–25, are composed of the three mile territorial sea, the internal waters of the United States that are subject to tidal influence; and those internal waters that are not subject to tidal influence but are or have been used, or are or have been susceptible for use, by themselves

or in connection with other waters, as highways for substantial interstate or foreign commerce. This definition is consistent with the statutory definition of "port", for importation purposes, 19 U.S.C. 232, the predecessor to which, section 2767 of the Revised Statutes, has been in effect since 1873–1874. Section 232 defines "port" to include any *place* from which merchandise can be shipped for importation. (*See Petrel Guano Co.* v. *Jarnette*, 25 F. 675, 677 (C.C.E.D.N.C. 1885)).

That a "transshipment" is a "landing", an activity within the meaning of the Act, was established in a Customs Service decision abstracted as T.D. 68–206(2). That decision also established that the Act applies whether or not fish or fish products otherwise subject to the Act are transshipped for export. Both of these prohibitions are based on the rationale that the proscription of the Act is not limited by its terms to an unlading of fish or fish products for any particular purpose or purposes. To hold otherwise would permit foreign-flag catching vessels to enter a U.S. port or place for transshipment or unlading for export, purposes not permitted by R.S. 4311 and 19 CFR 4.96(b). This result, which would diminish the privileges of the American fisheries reserved to certain U.S. vessels, clearly is not intended by the Act, the purpose of which is to strengthen, rather than weaken, the already existing constraints on the use of foreign vessels in the American Fisheries. We find further support for our conclusion in the decision that a "transshipment" is a "landing", in the context of a statute relating to the importation of merchandise, reached by the court in *The Fame*, 8 F. Cas. 982, 984 (D. Mich. 1858) (No. 4,633).

Any "landing" in violation of the Act would be considered an introduction of merchandise into the United States contrary to law and would subject the vessel involved to the penalty of seizure and forfeiture (18 U.S.C. 545; and 19 U.S.C. 1595a(a)). Fish or fish products landed in violation of the Act would be subject to forfeiture (18 U.S.C. 545). Every person who assists in the violation would be subject to a penalty equal to the value of the fish or fish products landed (19 U.S.C. 1595a(b)).

Because this activity is prohibited by the Act, it would come within the contemplation of section 1447 of title 19, and the penalties provided by 19 U.S.C. 1453 for unlading merchandise without a permit. Section 1447 prohibits the unlading of merchandise elsewhere than at a port of entry except as provided by the Secretary of the Treasury. Pursuant to the Customs Regulations promulgated under this section, the district director has the authority to permit only merchandise in bulk to be unladen outside a port of entry after entry of the vessel has been made (section 4.35, Customs Regulations). Even assuming that the fish would be considered merchandise

in bulk, the transshipment of the fish outside a port of entry in United States territorial waters would be prohibited by the Act, and the district director could not permit a prohibited act. Therefore any transshipment would occur without a permit, in violation of section 1447.

In addition to the prohibition against the contemplated activity in 46 U.S.C. 251(a), second sentence, the National Oceanic and Atmospheric Administration (NOAA) has informed us by letter, dated November 28, 1980 (correspondence enclosed), that the Fishery Conservation and Management Act prohibits a foreign-flag vessel from transshipping fish taken on the high seas in the fishery conservation zone, under a permit, to another vessel in the territorial seas of the United States. Penalties incurred for a violation of the Fishery Conservation and Management Act would be determined by NOAA.

Because the contemplated activity is prohibited both by the Act and the Fishery Conservation and Management Act, we find it unnecessary to respond to your questions as to the meaning of specific terms in 19 U.S.C. 1447 or to consider additional bases upon which Customs might prohibit the transshipment of fish from one foreign-flag vessel to another in the U.S. territorial sea.

In conclusion, we affirm our previous decision that a foreign-flag cargo vessel which receives fish or fish products derived therefrom, on the high seas, in the fishery conservation zone, from United States-flag catching vessels, and then transships the fish, for direct exportation, in the territorial waters of the United States, would be in violation of the Nicholson Act, 46 U.S.C. 251(a), second sentence. In addition, according to NOAA, this activity would be prohibited by the Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

(C.S.D. 81-160)

Entry: Basis for Accepting Duty at a Lower Rate in Effect at the Time of the Filing of the Immediate Delivery Papers

Date: January 28, 1981
File: ENT-1-01:CO:R:E:E
715242 M

This ruling reviews a protest against a District Director's decision that a delay by Customs in returning the immediate delivery papers until after the new rate of duty went into effect was not a basis for accepting duty at a lower rate in effect at the time of the filing of the immediate delivery papers.

Issue: Is the delay by Customs in returning to the importer his immediate delivery papers ground for accepting duty at a lower rate in effect at the time when he filed his immediate delivery papers?

Facts: The merchandise involved in this protest is fresh pears which are subject to a lower rate of duty, if entered during the period April 1 through June 30 inclusive of any year, than if entered at any other time of the year. In this case the importer's broker filed an application for immediate delivery for the pears on June 7, 1978. The vessel carrying the pears did not arrive at the port of entry until Saturday, June 24, 1978, however, and the first container was not released until Monday, June 26, 1978. Under section 141.68(a), Customs Regulations, in effect at the time, merchandise could not be considered entered until after its arrival within the limits of the port of entry and the subsequent deposit of estimated duties or subsequent official determination that no deposit was required.

On June 29, 1978, the broker wrote to Customs advising that the Immediate Delivery Permit had not been returned to the broker's office as of June 29. The final portion of the pears was not released until July 7, 1978, and the immediate delivery application papers were not returned to the broker until July 11, 1978. Entry was filed on July 13, 1978, by which time the higher rate of duty was in effect. The importer's attorney contends that under such circumstances the reason the entry could not be filed before June 30, 1978, was due to Customs delay in handling the immediate delivery application papers. It appears that the invoice was attached to these papers and the broker could not prepare the entry without the invoice.

Law and analysis. Title 19, United States Code, Section 1315, provides, in pertinent part, that the rate of duty for an article entered for consumption shall be the rate in effect when the document comprising the entry for consumption and estimated duties are deposited with Customs. The filing of an application for a special permit for immediate delivery is not an entry.

It is also recognized that when an application for a special permit for immediate delivery is filed, there may be a delay in the return of the permit and supporting documentation to the importer or broker. In general, the entry summary must be filed within 10 working days after the application for a special permit for immediate delivery is filed, or the importer is subject to a penalty. In order to assure that importers are not penalized for delays in processing by Customs, it was the policy of the Customs Service at that time that in any case in which the period taken for filing an entry after immediate delivery release exceeds the 10-day period for filing an entry, if the number of days in excess of 10 is equal to or less than the period during which Customs held the

invoices or other papers needed to make entry, penalties for late filing should not be imposed. This policy has since been slightly modified.

This policy with respect to penalties, however, has no application in the present case, which is concerned only with the rate of duty to be applied to an importation. Importers and their brokers must realize that if they file an application for a permit for immediate delivery near the end of a period when articles are subject to a lower rate of duty, the immediate delivery package may not be returned to them for several days. Accordingly, they should either file an entry instead, or be prepared with duplicate invoices and other documentation so that they can promptly file for merchandise released under the immediate delivery procedure a formal entry (now called entry summary) prior to the effective date for the higher rate of duty.

It may be noted that under section 141.68 of the Customs Regulations, as amended by T.D. 79–221, the "time of entry" is specifically defined for various situations, including when merchandise is released under the immediate delivery procedure.

Holding: The "time of entry" for merchandise released under the immediate delivery procedure is the time the entry summary is filed in proper form with estimated duties attached. A delay in filing the entry summary which results from the delay in the return of the immediate delivery package by Customs, is not a basis for deeming entry to have been made at an earlier date. Therefore, the protest is denied in full.

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings Attention: Legal Reference Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. These copies will be made available at a cost to the requester of $0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions listed in earlier issues of the Customs Bulletin, through February 2, 1981, are available in microfiche format at a cost of $30.90 ($.15 per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Reference Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: June 1, 1981.

B. JAMES FRITZ,
Director,
Regulations & Information Division.

347-182 O - 81 - 5

Date of decision	File No.	Issue
5- 7-81	105061	Vessels: transportation of construction equipment by a foreign-built foreign-flag barge
5- 7-81	106106	Vessels: whether the operation of a pleasure vessel by a condominium association for use by its members is a use in coastwise trade
5-14-81	105122	Vessels: whether a vessel documented in Panama may be used to carry in the coastwise trade persons who have purchased a stateroom-time-period-unit share in the vessel
5-15-81	106139	Instruments of international traffic: whether the movement of spirits in foreign-manufactured portable tank containers from Midwest U.S. to the U.S. Virgin Islands would be considered domestic
5-15-81	105158	Vessels: whether a Canadian-owned, built, and flagged fish processing vessel may be documented in the U.S. and may process fish in Alaskan waters
5- 6-81	542435	Value: the appropriateness of U.S. value for imported diesel engines for automotive parts where assists have been supplied to the exporter
3-26-81	800154	Classification: plastic laminate sheets (771.43, 774.55)
3-30-81	800195	Classification: nutritional health food supplement (183.05)
3-31-81	800201	Classification: unassembled grain storage bins (653.00)
3-31-81	800206	Classification: blasting caps (755.45), explosives (408.00, 408.04)
3-31-81	800223	Classification: copper-8 quinolinolate (408.16)
3-31-81	800252	Classification: toy figures (737.22, 737.40)
3-24-81	800282	Classification: face mask (386.50, 389.62)
3-31-81	800289	Classification: diesel engines (870.40)
3-31-81	800300	Classification: valve seat and valve guard castings (680.27)
3-30-81	800301	Classification: main body assembly casting for a hydraulic control valve (680.27)
3-31-81	800313	Classification: stabil binders (657.25)
4- 2-81	800319	Classification: ladies knitwear (382.78)
3-26-81	800324	Classification: scouring pad (654.01)
4- 2-81	800328	Classification: die half (674.53)
4-29-81	800343	Classification: ejectors of tear gas (662.50)
4- 2-81	800344	Classification: spring water (166.10)
3-30-81	800349	Classification: man's woven synthetic dress shirt (380.84)
3-30-81	800354	Classification: steel pipe couplings (610.80)
4- 3-81	800357	Classification: plastic drinking cup with built-in straw (772.15)
3-30-81	800359	Classification: copper wool scouring pad (654.10)
4- 7-81	800370	Classification: elastic net slip (378.05)
3-31-81	800371	Classification: plastic telephone holder (774.55)
5- 4-81	800386	Classification: Waikato Mark 3 milk meter (666.00)
4-29-81	800442	Classification: woven textile fabric coated with oil

Date of decision	File No.	Issue
5– 5–81	800448	Classification: veneer and edging material (254.80, 254.-85, 254.70, 256.30)
4–29–81	800455	Classification: steel sections (609.84)
4–29–81	800474	Classification: genuine applehead product (206.98)
5– 5–81	800481	Classification: ceramic strainer core and alloyed interchangeable cutting tools (649.43, 674.50, 531.39)
4–29–81	800482	Classification: steel fan guards (661.06)
5– 5–81	800486	Classification: bone protector (355.25)
4–29–81	800504	Classification: knit wearing apparel (382.69)
4–29–81	800514	Classification: plastic plant watering device (772.15)
4–29–81	800516	Classification: plant mobiles (727.35)
5– 5–81	800520	Classification: boy's woven polyester and cotton shorts (380.84)
5– 5–81	800521	Classification: forged rings (680.37)
4–29–81	800534	Classification: men's woven silk shirt (380.75)
4–29–81	800537	Classification: steel tunnel lining (652.94)
5– 5–81	800544	Classification: self-standing electric, motor-operated shredder (666.00)
5– 5–81	800551	Classification: polar bear rug (791.19)
4–29–81	800566	Classification: scrub brush (750.70)
5– 5–81	800582	Classification: machine tools (674.35, 674.42, 674.53)
5– 4–81	061679	Classification: women's casual thong shoe (700.60)
Not dated	061798	Classification: women's casual, open toe, open back, beachcomber type sandals (700.60)
5– 7–81	064688	Classification: bean bag animals (737.40)
5– 5–81	065009/ 061880	Classification: soft plush-type dog (737.40)
4–21–81	065159	Classification: women's raincoat with stitched down box pleat on pocket (382.04)
5– 4–81	065433	Classification: sweaters composed of textile materials and leather (791.75)
4–17–81	065660	Classification: regulating wheels for centerless grinders (674.53)
5– 5–81	065669	Classification: moon boot shells with no linings (700.60)
4–30–81	065695	Classification: hi-mannan/gluco-mannan diet food supplements (188.38)
4–29–81	065793	Classification: knitted baby sock (374.35)
5–11–81	065862	Classification: "Kung Fu" shoes (700.60)
4–21–81	065884	Classification: home gardening tools (scissors) (650.91)
5– 4–81	065892	Classification: off-grade methanol (427.97)
4–17–81	065981	Classification: high pressure sewer cleaner (662.50, 692.16)
5–11–81	066377	Classification: women's garments with lace collars
5– 5–81	066713	Classification: vinyl skate boot (700.58)
4–17–81	066881	Classification: hot foil stamping machine (678.50)
4–17–81	066885	Classification: silos (511.61)
5– 8–81	068025	Classification: moon boot shells (700.60)
5– 7–81	068026	Classification: moon boot shells (700.60)
5– 7–81	068167	Classification: parts of footwear (two piece plastic upper and molded plastic outersole) (700.58)

Date of decision	File No.	Issue
5–11–81	068259	Classification: boy's protective boot with leg type tie and a unit molded rubber bottom and rubber uppers with nylon overlay (700.60)
5– 4–81	068303	Classification: boot liner (700.95)
5– 5–81	068476	Classification: plastic blanket bags (772.20)
5– 7–81	068506	Classification: bean bag figures of animate objects (737.40)

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 81–46)

WAKUNAGA OF AMERICA CO. LTD., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 79–4–00706

GARLIC AND SOYBEAN MIXTURE

A mixture of garlic in powder form and soybeans in powder form was incorrectly treated as commingled articles subject to separate duties under General Headnote 7 of the Tariff Schedules of the United States.

The treatment of the garlic by aging in alcohol and mixing with soybean powder made the entire mixture classifiable as a prepared vegetable within the meaning of Item 141.81. The preparation was for the purpose of incorporating the garlic into food supplement tablets and capsules.

[Judgment for plaintiff.]

(Decided May 20, 1981)

Glad, Tuttle & White (*Edward N. Glad* at the trial and on the brief) for the plaintiff.

Thomas S. Martin, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Susan Cassell* at the trial; *James A. Resti*, on the brief), for the defendant.

WATSON, Judge: The defendant treated these mixtures of garlic in powder form and soybean powder as commingled merchandise under General Headnote 7 of the Tariff Schedules of the United States [1] (TSUS) and subjected them to duty at the highest rate applicable to any part of them. The rate chosen was the 35 percent ad valorem provided under Item 140.60 of the TSUS for garlic reduced to flour.[2]

Plaintiff claims that the importations are properly classified as prepared vegetables under Item 141.81 of the TSUS,[3] dutiable at

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[1] General Headnote 7(a), TSUS:

7. *Commingling of Articles.* (a) Whenever articles subject to different rates of duty are so packed together or mingled that the quantity or value of each class of articles cannot be readily ascertained by customs officers (without physical segregation of the shipment or the contents of any entire package thereof), by one or more of the following means:

(i) sampling,

(ii) verification of packing lists or other documents filed at the time of entry, or

(iii) evidence showing performance of commerical settlement tests generally accepted in the trade and filed in such time and manner as may be prescribed by regulations of the Secretary of Treasury, the commingled articles shall be subject to the highest rate of duty applicable to any part thereof unless the consignee or his agent segregates the articles pursuant to subdivision (b) hereof.

• • • • • • •

[2] Item 140.60, TSUS, as modified by T.D. 68-9:

Subpart B

Vegetables, dried, desiccated, or dehydrated, whether or not reduced in size or reduced to flour (but not otherwise prepared or preserved):

• • • • • • •

Reduced to flour:

140.60	Garlic	35% ad val.

• • • • • • •

[3] Item 141.81, TSUS, as modified by T.D. 68-9:

Subpart C

Vegetables (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved (except vegetables in subpart B of this part):

• • • • • • •

Other

• • • • • • •

141.81	Other	17.5% ad val.

the rate of 17.5 percent ad valorem. In the alternative, plaintiff claims that the two components of the importations should have been segregated by weight, with the garlic portion dutiable as first mentioned above and the soybean portion dutiable at the rate of 13 percent ad valorem under Item 140.75 of the TSUS as other vegetables reduced to flour.[4]

The testimony established that the important ingredient in these mixtures is the garlic, which is present in the amount of 19 percent or 34 percent by weight. After harvest the garlic is aged in alcohol, filtered out and concentrated by a vacuum process. That extract, together with garlic powder produced by dehydration, was mixed with soybean powder. All this was done to subdue the garlic odor and permit the garlic to be incorporated into food-supplement capsules and tablets. For that purpose, after importation, it is mixed with brewer's yeast, kelp and alginic acid. It follows that the original mixing of the garlic and soybean powders was not the commingling of separately dutiable importations for which General Headnote 7 was designed. It was part of the process of preparing garlic for use as a food supplement by those who anticipate benefits from its ingestion.

The defendant's position here is similar to the rejected argument made by plaintiff in *Japan Food Corporation* v. *United States*, 57 Cust. Ct. 128, C.D. 2741 (1966), that dried fish and dried seaweed, in a mixture, ought to have been separately treated as commingled merchandise. The result would have been free entry for the seaweed portion, rather than classification of the whole as an unenumerated manufacture. The court, however, distinguished between mere commingling and the process of manufacture of a soup stock powder, a distinction which is relevant to this case.

Here the ingredients are processed and mixed for the purpose of preparing the garlic for its intended use and suppressing what some consider to be its noisome character. The aging and blending in measured proportions is a process of manufacture and results in an article with modified characteristics, differing from those of its separate constituents.

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[4] Item 140.75, TSUS, as modified by T.D. 68-9:

Subpart B

Vegetables, dried, desiccated, or dehydrated, whether or not reduced in size or reduced to flour (but not otherwise prepared or preserved):

	Reduced to flour:	
140.75	Other	13% ad val.

It is incorrect to treat such blending as a simple commingling. It is more properly characterized as part of the preparation of the garlic, a treatment which results in a prepared vegetable within the meaning of Item 141.81.

Defendant argues that the importation is not otherwise prepared or preserved within the meaning of Item 141.81 and contends that the provision is limited to articles which have been subjected to some process of preservation.

The defendant considers the drying and reduction of the importation to flour, which is clearly a process of preservation, to be germane only to Item 140.60, because of its preference for classification of the "commingled" ingredients under Item 140.60, which speaks specifically of garlic reduced to flour. Yet, if the importation is correctly viewed as a unitary product in which the garlic, in two forms, has been combined with the soybean flour the resulting article is indeed in a preserved condition within the meaning of Item 141.81, and the existence of a specific provision for the separate ingredients is irrelevant.

In any event, the garlic is also prepared within the meaning of Item 141.81. The treatment it has undergone, including aging in alcohol ond blending with soybean powder is a process of preparation. The term "prepared" is not a synonym for "preserved." A distinction was made at least as far back as the early part of this century. *Anderson & Co.* v. *United States*, 6 Ct. Cust. Appls. 108, T.D. 35344 (1915). The word "prepared" has often been used to describe foods containing ingredients which have no effect on preservation. For example, in *B. Westergaard & Co.* v. *United States*, 19 Ct. Cust. Appls. 299, T.D. 44298 (1932) meat balls and fish balls containing a quantity of vegetable binder were held to be classifiable as prepared meat and prepared fish. In *United States* v. *A. Sahadi & Co., Inc.*, 23 CCPA 293, T.D. 48165 (1936) thin sheets of dried apricot pulp were smeared with olive oil and rolled up. They were held to be apricots otherwise prepared or preserved rather than fruit pastes or pulps.

While the cases involving the word "prepared" have arisen in a wide variety of circumstances and could be technically distinguished, the basic fact remains that the word originated and was normally used to describe edible substances which were not in their original, fresh condition and which had been processed or prepared for use by some means. *Lekas & Drivas* v. *United States*, 19 CCPA 389, T.D. 45523 (1932); *Vitelli* v. *United States*, 1 Ct. Cust. Appls. 237, T.D. 31274 (1911). See also, *United States* v. *Conkey & Co.*, 12 Ct. Cust. Appls. 552, T.D. 40783 (1925); *Stone* v. *Downer & Co.* v. *United States*, 17 CCPA 34, T.D. 43323 (1929).

The classification considered correct by this court is not limited to vegetables which have only been preserved. The suggestion to that effect in *Border Brokerage Co. Inc.* v. *United States*, 60 Cust. Ct. 487, C.D. 3437 (1968) conflicted with the recent and remote history of the language and has since been clearly disapproved by our appellate court. *Green Giant Co.* v. *United States*, 61 CCPA 46, 495 F. 2d 775 (1974).

It can be added that if Congress had intended to limit the vegetables covered by this provision strictly to those which had been preserved it need not have used the additional word "prepared." Moreover, the legislative history makes it clear that the linking of the phrase "prepared and preserved" together with the specified processes of preservation was simply the result of the combination of two provisions which were formerly separate and not a restriction of the new provision to preserved vegetables. Tariff Classification Study, Schedule 1, Part 8, page 114 (1960).

For the reasons expressed above the court concludes that this merchandise was incorrectly treated as a commingling of two separately dutiable substances. It should have been considered a single product, which by its contents and processing was properly classifiable as a prepared vegetable. The court's conclusion makes it unnecessary to discuss plaintiff's alternative claim that even if the merchandise was considered to be commingled the defendant should have ascertained the amounts of the two ingredients and separately assessed them with the appropriate duty.

Judgment will enter accordingly.

(Slip Op. 81–47)

ASSOCIATED DRY GOODS CORPORATION, PLAINTIFF *v.* UNITED STATES, ET AL., DEFENDANTS

Court No. 81–4–00375

Memorandum and Order on Plaintiff's Motion for a Preliminary Injunction

[Plaintiff's motion denied.]

(Decided May 21, 1981)

Rode & Qualey, attorneys for plaintiff, by *Michael S. O'Rourke and Patrick D. Gill*, for the plaintiff.

Thomas S. Martin, Acting Assistant Attorney General, for the defendants by *David M. Cohen*, Branch Director, Commercial Litigation Branch and *Velta A. Melnbrencis*, of counsel.

RE, Chief Judge: In this action, plaintiff seeks preliminary and permanent injunctive relief against the imposition of certain import

restraint levels on wool sweaters exported from the People's Republic of China ["China"]. These restraint levels were established by the Committee for the Implementation of Textile Agreements ["CITA"] and are enforced by the United States Customs Service.

The action was commenced on April 13, 1981 by a motion for a preliminary injunction and an application for an order to show cause why the requested injunctive relief should not be granted. The court issued the order to show cause, and an evidentiary hearing was held on April 22, 1981. Defendants' opposition to the requested injunctive relief was combined with a motion to dismiss for failure to state a claim upon which relief can be granted. At the conclusion of the hearing, from the bench, the court denied the motion for a preliminary injunction, and reserved decision on defendants' motion to dismiss. The court further advised the parties that the case would be assigned to a judge who would provide immediate judicial supervision and prompt disposition on the merits.

This action arises out of Section 204 of the Agricultural Act of 1956 ["section 204"], 7 U.S.C. 1854, which authorizes the President to enter into agreements with foreign governments limiting the exportation and importation of agricultural commodities and textile products, and to issue regulations to carry out those agreements.

CITA was established by Executive Orders of the President [1] to supervise the implementation of textile agreements entered into pursuant to section 204. It was also authorized to direct the Commissioner of Customs to take such actions as CITA recommends to carry out the agreements.

On September 17, 1980, the United States and China entered into an Agreement Relating to Trade in Cotton, Wool and Man-Made Fiber Textiles and Textile Products [the "Agreement"]. Paragraph 8 of the Agreement provides in material part:

(a) In the event that the Government of the United States believes that imports from China "classified in any category or categories not covered by Specific Limits are, due to market disruption, threatening to impede the orderly development of trade between the two countries," the United States may request consultations with China with a view towards avoiding such market disruption. At the time of the request, the United States is to provide China with "a detailed factual statement of the reasons and justification" for the request, together with current data, which shows "the existence or threat of market disruption" and the contribution of imports from China to the disruption;

(b) China agrees to consult with the United States within 30 days of receipt of a request for consultations, and both sides agree to make

[1] Ex. Ord. No. 11651, 37 Fed. Reg. 4699 (1972), as amended by Ex. Ord. No. 11951, 42 Fed. Reg. 1453 (1977), Ex. Ord. No. 12188, 45 Fed. Reg. 989 (1980).

every effort to reach agreement on a mutually satisfactory resolution of the issue within 90 days of the receipt of the request;

(c) During the 90-day consultation period, China agrees to hold its exports to the United States in the category or categories subject to the consultations to a level no greater than 35% of the amount entered in the latest twelve-month period for which data are available; and

(d) If no mutually satisfactory solution is reached during the consultations, China will limit its exports in the category or categories under the consultations for the succeeding twelve months to a level of 6% above the level of imports entered during the first twelve of the most recent fourteen months preceding the date of the request for consultations.

Under the Agreement, textiles and textile products are classified according to categories: wool sweaters for men and boys are covered in category 445; wool sweaters for women, girls and infants are covered in category 446. The Agreement does not impose a specific limit upon the importation of category 445/446 merchandise to the United States.

Pursuant to paragraph 8(a) of the Agreement, on October 18, 1980, the United States requested consultations with China with regard to category 445/446 merchandise produced or manufactured in China which was being exported to the United States. A notice of the request was published in the Federal Register on October 27, 1980 [45 Fed. Reg. 70960]. The detailed factual statement, required by paragraph 8(a) of the Agreement, was issued by CITA containing those facts which formed the basis of the United States' request for consultations.

The consultations between the United States and China did not lead to a mutually acceptable solution to the problem of category 445/446 merchandise. Accordingly, CITA decided to establish import restraint levels based upon the formula set forth in paragraph 8 of the Agreement, and to prohibit entry of imports of category 445/446 in excess of 183,706 dozen, representing the combined restraint level for the 90-day consultation period and the succeeding twelve-month period. On January 19, 1981, CITA published a notice ["Notice"] in the Federal Register to that effect [46 Fed. Reg. 5033–4].

The Notice directed the Commissioner of Customs, effective January 19, 1981, and for the period October 19, 1980 through January 16, 1982, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in category 445/446, produced or manufactured in China and exported on and after October 19, 1980, in excess of 183,706 dozen.

The 183,706 dozen limit for category 445/446 textile products produced or manufactured in China and exported since October 29, 1980 was filled on February 9, 1981.

After February 9, 1981, plaintiff sought to enter into the United States category 445/446 textile products (wool sweaters) produced or manufactured in China. Pursuant to the Notice, plaintiff's importations were refused, or excluded from entry.

On March 12, 1981, plaintiff filed Protest Nos. 1001–1–002939, 1001–1–002940 and 1001–1–002941 protesting the refusal to release, and exclusion of, or delivery into the United States, of its wool sweaters, pursuant to the Notice. On March 30, 1981, plaintiff filed Protest No. 1001–1–003596 similarly protesting the refusal to release, and exclusion of, or delivery into the United States of certain other wool sweaters. The first three, but not the last, of plaintiff's four protests were denied by the Customs Service before this action was commenced on April 13, 1981.

Plaintiff's motion for preliminary injunction alleges that plaintiff will be irreparably harmed if injunctive relief is not granted and seeks an order: enjoining CITA "from authorizing or permitting establishment of restraint levels for wool textile products in category 445/446, produced or manufactured in rhe People's Republic of China in derogation of the provisions of the Bilateral Textile Agreement signed on September 17, 1980"; directing the Commissioner of Customs to allow entry of all wool textile products in category 445/446 produced or manufactured in China and exported on or after October 19, 1980, without regard to the number of units imported. Alternatively, plaintiff seeks an order enjoining the Customs Service from not allowing entry or withdrawal from warehouse for consumption of wool textile products in category 445/446, produced or manufactured in China, and exported on or after October 19, 1980, up to 237,613 dozen or, in the alternative up to 220,392 dozen.

Plaintiff does not challenge the President's authority to enter into the Agreement, but rather alleges that the Agreement was unlawfully implemented by CITA. More specifically, plaintiff alleges that CITA's request for consultations with China was made without any evidence of market disruption or a threat of market disruption. It therefore contends that: the request for consultations made on October 18, 1980 by CITA was arbitrary, capricious and an abuse of discretion; the Agreement does not authorize CITA to combine, as it did, the restraint and consultation levels in calculating the import restraint level pertaining to category 445/446 imports; and plaintiff was not given advance notice of CITA's request for consultations, nor was it afforded any opportunity to present its views to CITA prior to the request for consultations.

In opposition to the requested injunctive relief, and in support of its motion to dismiss, defendant contends that part of the action should be dismissed since the court has jurisdiction only over those

claims which derive from plaintiff's three denied protests. Defendants also contend that: plaintiff lacks standing to challenge the Agreement or its implementation; the issues raised by plaintiff regarding the Agreement or its implementation are nonjusticiable political questions; the contested actions of CITA and the Customs Service were taken in accordance with law; no violations of plaintiff's procedural due process rights occurred with regard to the request for consultations with China; and plaintiff has failed to state a claim upon which relief may be granted.

This court's recent opinion in *American Air Parcel Forwarding Company, Ltd.* v. *United States*, 1 CIT ——, Slip Op. 81–45 (May 15, 1981), discussed the factors to be considered by the court in deciding a request for interlocutory injunctive relief. *See, Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F. 2d 841 (D.C. Cir. 1977), and *Virginia Petroleum Jobbers Association* v. *F.P.C.*, 259 F. 2d 921 (D.C. Cir. 1958). *See also, S. J. Stile Associates, Ltd.* v. *Dennis Snyder*, 67 CCPA ——, C.A.D. 1261, —— F. 2d —— (1981); *A. O. Smith Corp., et al.* v. *F.T.C.*, 530 F. 2d 515 (3d Cir. 1976).

In *Holiday Tours*, the Court of Appeals for the District of Columbia quoted from the "leading case" of *Hamilton Watch Co.* v. *Benrus Watch Co.*, 206 F. 2d 738, 740 (2d Cir. 1953), which explained:

> To justify a temporary injunction it is not necessary that the plaintiff's right to a final decision, after a trial, be absolutely certain, wholly without doubt; if the other elements are present (i.e., the balance of hardships tips decidedly toward plaintiff), it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation.

The court, in *Holiday Tours*, at 844, also quoted from *Charlie's Girls, Inc.* v. *Revlon, Inc.*, 483 F. 2d 953, 954 (2d Cir. 1973) (per curiam), which phrased the test in the following manner:

> One moving for a preliminary injunction assumes the burden of demonstrating either a combination of probable success and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in his favor.

In summarizing the court's position in *Holiday Tours*, Judge Leventhal wrote:

> We believe that this approach is entirely consistent with the purpose of granting interim injunctive relief, whether by preliminary injunction or by stay pending appeal. *Generally, such relief is preventative or protective; it seeks to maintain the status quo pending a final determination of the merits of the suit.* An order maintaining the status quo is appropriate when a serious legal question is presented, *when little if any harm will befall other*

> *interested persons or the public* and when denial of the order would inflict irreparable injury on the movant. There is substantial equity, and need for judicial protection, whether or not movant has shown a mathematical probability of success. *Holiday Tours*, at 844. [Emphasis added.]

In this case, the court has considered the relevant factors as well as the potential harm to other interested parties and the public interest if the court were to restrain the enforcement of the embargo, or quantitative restriction of general application on importations into the commerce of the United States.

In cases which seriously affect the public interest, a court of equity will require a much stronger showing before granting a preliminary injunction than is required when only private interests are at stake. *Virginia Ry. Co.* v. *System Federation*, 300 U.S. 515, 552 (1937). In cases of serious doubt, the discretion of the court must be exercised in a manner that would achieve the larger objectives of the public interest. See, *Hecht Co.* v. *Bowles*, 321 U.S. 321, 331 (1944).

A preliminary injunction should be denied if it will adversely affect the public or other interested parties for which, even temporarily, an injunction bond cannot compensate. *Virginia Ry. Co.* v. *United States*, 272 U.S. 658, 674 (1926). The court should withhold such relief until a final determination of the controversy, even though the delay may be burdensome to the plaintiff. *Yakus* v. *United States*, 321 U.S. 414, 440 (1944). *See also Virginia Petroleum Jobbers Association* v. *F.P.C.*, 259 F. 2d 921, 927 (D.C. Cir. 1958).

Assuming plaintiff has overcome the burden of showing the probability of irreparable harm and the likelihood of success on the merits, or alternatively, that the parties have presented serious questions of law and that the balance of the hardships tips in favor of the plaintiff, the court must still protect the public interest.

On the question of the public interest, defendants maintain that to grant plaintiff's request for relief would adversely affect the ability of the United States to conduct its foreign policy with China and would impede the implementation of this and other bilateral textile agreements.

Defendants further contend that plaintiff has failed to demonstrate that its request for interlocutory relief will not injure the domestic sweater industry. In support of this contention, defendants state that, if the embargo is enjoined and the sweater market peaks and turns downward, the domestic manufacturers will suffer immediate injury due to the lower priced imports from China. These imports will continue to enter the shrinking American market in increased amounts thereby causing the cancellation of domestic orders not purchased with irrevocable letters of credit, and could drive some domestic

manufacturers out of business. It is the defendants' position that in that situation, CITA must take special care to protect the domestic industry from massive imports.

Finally, defendants contend that even during the best of times for the domestic industry, the government must carefully monitor surges in particular categories of imports. Otherwise, when the American market returns to a more normal level of demand following a temporary upswing, the established higher import level may serve as the basis for future imports, to the great detriment of the domestic industry.

Preliminary injunctions are generally granted to preserve the status quo pending final determination of the controversy between the parties. *Holiday Tours*, at 844; *Hunter* v. *Atchison, T. & S.F. Ry. Co.*, 188 F. 2d 294, 298 (7th Cir. 1951). When the granting of a motion for preliminary injunction would give a plaintiff all the advantages which would be obtained as a result of a final favorable adjudication of the controversy, the motion ordinarily should be denied. *Selchow & Righter Co.* v. *Western Printing & Lithographing Co.*, 112 F. 2d 430, 431 (7th Cir. 1940).

In this case the requested injunction sought is against the enforcement of a quantitative restriction of general application on importations. Hence the plaintiff does not seek to preserve the status quo, but rather seeks to change it for its own pecuniary advantage. It is equally clear that a change would necessarily involve the temporary lifting of the existing restriction to permit plaintiff's importations to enter the stream of commerce throughout the United States. The market disruption repercussions are impossible to calculate in advance. Certainly they would inevitably affect the public interest and those of third parties in ways which could not possibly be compensated by an injunction bond. No bond could indemnify all of the interests affected, directly or indirectly, by the temporary lifting of the quantitative limitations.

The granting of plaintiff's request for an interlocutory injunction would achieve the ultimate relief sought in this action.

In the words of *Holiday Tours*, plaintiff has not shown that "little if any harm will befall other interested persons". Nor has plaintiff shown that the potential harm to the public interest could be, as it was in *American Air Parcel*, "adequately indemnified by a bond". *Ohio Oil Co.* v. *Conway*, 279 U.S. 813, 815 (1929). Consequently, the court has concluded that the public interest and that of third parties outweigh the alleged irreparable injury to plaintiff.

Under all of the circumstances, it is the determination of the court that the plaintiff's request for an interlocutory injunction be denied.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DEPARTMENT OF THE TREASURY, *May 26, 1981.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/188	Watson, J. May 19, 1981	Ciba Chemical & Dye Corp.	74-4-01021	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less amounts shown in column III of schedule of appraisement and claims attached to decision and judgment representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by Customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R31/180	Watson, J. May 19, 1981	Ciba Chemical & Dye Corp.	74-11-03109	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less amounts shown in column III of schedule of appraisement and claims attached to decision and judgment representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by Customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R81/190	Watson, J. May 19, 1981	Ciba-Geigy Corporation	74-3-00607	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less amounts shown in column III of schedule of appraisement and claims attached to decision and judgment representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/191	Watson, J. May 19, 1981	Ciba-Geigy Chemical & Dye Corp.	74-10-02967	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less amounts shown in column III of schedule of appraisement and claims attached to decision and judgment representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation, et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R61/192	Watson, J. May 19, 1961	Ciba-Geigy Corporation and Ciba-Geigy Corporation-REN Plastics	75-6-01588	United States value	U.S.selling prices, less 1¢ cash discount as determined by customs officer at time of appraisement; less amounts shown in column III of schedule of appraisement and claims attached to decision and judgment representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/193	Watson, J. May 19, 1981	Ciba-Geigy Corporation	75-10-02756	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less amounts shown in column III of schedule of appraisement and claims attached to decision and judgment representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R81/194	Watson, J. May 19, 1981	Geigy Chemical Corporation or its successor Ciba-Geigy Corporation.	74-3-00905	United States value	U.S. selling price, less 1% cash discount as determined by customs officer at time of appraisement; less amounts shown in column III of schedule of appraisement and claims attached to decision and judgment representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/195	Watson, J. May 19, 1961	Geigy Chemical Corporation	R65/18426	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R61/196	Watson J. May 19, 1961	Geigy Chemical Corporation	R65/18453	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/197	Watson, J. May 19, 1981	Geigy Chemical Corporation	R65/23785	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 25.7% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R81/198	Watson J. May 19, 1981	Geigy Chemical Corporation	R66/2755	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/199	Watson, J. May 19, 1981	Geigy Chemical Corporation	R66/13741	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R81/200	Watson, J. May 19, 1981	Geigy Chemical Corporation	R66/13742	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/201	Watson, J. May 19, 1981	Ciba Chemical and Dye Company	R66/19722	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 23.5% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R61/202	Watson, J. May 19, 1961	Intracolor Corporation	75-10-02757	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less amounts shown in column III of schedule of appraisement and claims attached to decision and judgment representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/203	Watson, J. May 21, 1981	Geigy Chemical Corporation	R66/2756	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R84/204	Watson, J. May 21, 1961	Geigy Chemical Corporation	R68/2016	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 38.7% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/206	Watson, J. May 21, 1981	Geigy Chemical Corporation	R68/5047	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 38.7% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officers to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R81/206	Watson, J. May 22, 1981	Geigy Chemical Corporation	R69/5673	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 38.7% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
81/307	Watson, J. May 22, 1981	Geigy Chemical Corporation	R69/6362	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 28.9% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R84/204	Watson, J. May 22, 1981	Geigy Chemical Corporation	R69/9216	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 38.7% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less cost of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/209	Watson, J. May 22, 1981	Geigy Chemical Corporation	R70/1626	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 28.9% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less cost of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R81/210	Watson, J. May 22, 1981	Geigy Chemical Corporation	R70/5576	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 31.1% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less cost of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

International Trade Commission Notices

Investigations by the United States International Trade Commission

DEPARTMENT OF THE TREASURY, *June 4, 1981.*

The appended notices relating to investigations by the United States International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

(19 CFR Part 201 and Part 207)

PROPOSED REVISIONS TO THE GENERAL PROCEDURES FOR THE CONDUCT OF INVESTIGATIONS AND THE SPECIFIC PROCEDURES FOR THE CONDUCT OF INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

AGENCY: United States International Trade Commission.

ACTION: Proposed revisions of procedural rules.

SUMMARY: The proposed rules set forth changes and clarifications for the conduct of Commission investigations under section 303 and Title VII of the Tariff Act of 1930 (19 U.S.C. 1303 and 2501 *et seq.*) and sections 102 through 107 of the Trade Agreements Act of 1979 (Pub. L. 96–39, 93 Stat. 144). Several of the proposed changes in the procedural rules would affect the conduct of all investigations under the Commission's jurisdiction, including investigations carried out pursuant to the Tariff Act of 1930, the Agricultural Adjustment Act, and the Trade Act of 1974.

Comments are requested on any and all aspects of the rules for conducting antidumping and countervailing duty investigations and, especially, on the proposed changes set forth.

DATE: Comments on the proposed revisions to the procedural rules must be submitted on or before (45 days from the date of publication in the Federal Register).

ADDRESS: Comments and suggestions concerning the proposed revisions should be submitted to the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979 (Pub. L. 96–39, 93 Stat. 144) approves and implements trade agreements negotiated by the United States in the Tokyo round of Multilateral Trade Negotiations. Upon acceptance by the United States of the negotiating instruments relating to subsidies and countervailing measures and to dumping and antidumping measures, the Trade Agreements Act has brought about extensive changes in U.S. countervailing duty and antidumping duty laws, primarily through amendment of the Tariff Act of 1930.

In order to implement procedures to carry out the provisions of the Trade Agreements Act, the U.S. International Trade Commission published proposed procedural rules in the Federal Register of October 15, 1979 (44 FR 59392). Following an analysis of the comments received, the Commission promulgated procedural rules effective January 1, 1980, and published a notice thereof in the Federal Register of December 26, 1979 (44 FR 76458). On August 27, 1980, the Commission published a notice in the Federal Register (45 FR 57148) that on the basis of the administrative experience since January 1, the Commission was considering proposing amendments to specific portions of the rules. The notice requested public comments suggesting changes in the rules. Those comments are discussed below.

In order to present the proposed changes, whether suggested by the Commission and its staff or by public comment, a discussion by subject matter rather than a section-by-section analysis is most appropriate. Each proposal is discussed below.

NUMBER OF COPIES OF COMPLAINT OR PETITION

It is proposed that the number of copies of the complaint or petition filed with the Commission be changed from 19 to 14. It is also proposed that an additional copy be served on each person named in the complaint as engaging in the act complained of. With recent experience in these investigations as a guide, compliance with this rule should entail no more than four or five additional copies, under normal

circumstances. These changes will be carried out by amending §§ 201.8(d) and 210.10(a).

FILING OF DOCUMENTS

In order to eliminate confusion about public and confidential versions of a document, it is proposed that the requirement of an original and 14 copies refer specifically to the confidential version. The submitter of a document would be required to submit at least one copy, with confidential information deleted, for public inspection. The petition will not be considered "properly filed" until, among other requirements, the requisite number of copies is filed. These changes will be carried out by amending §§ 207.10 and 201.8(d).

CERTIFICATE OF SERVICE

The Commission proposes that a certificate of service be required for each document. Any document submitted to the Secretary which does not contain a certificate of service would not be accepted for filing. These changes will be carried out by adding a new subsection 201.16(b)(3) and by amending subsection 201.16(c).

PARTIES

Since the Commission proposes to require certificates of service, it is necessary to define "party." It is proposed to define "party" as any person with a proper interest in the subject matter of the investigation, including an "interested party" as used in Title VII, who files a notice of participation with the Secretary. The notice must state that the person has an interest in the subject matter of the investigation and intends to file a brief therein. It is hoped that by limiting the term "party" in this way, only those persons who have a direct interest in the investigation will become parties. All notices would be screened by the Chairman or other person to preside at the hearing.

It is proposed that the notices must be received at least 3 weeks prior to the date set for a hearing, or 3 weeks prior to the date on which prehearing briefs are due, or on the date a prehearing conference is scheduled, whichever occurs first. The Secretary would then prepare a service list containing the names and addresses of all the parties or their representatives. A late-filing provision is also proposed.

To accomplish these purposes, a new definition of "party" would be added as § 201.2(i) and § 207.2(i) would be deleted. § 201.13 would be redrafted in its entirety to relate to participation in investigations. The material currently in § 201.13 relating to hearings, as discussed *infra*, would be amended and moved to § 201.12.

STATEMENTS, BRIEFS, AND TESTIMONY

It is proposed that the term "statement" not be used in the rules, and that the terms "brief" and "testimony" be used exclusively. The proposed changes would occur in §§ 207.15, 207.22, 207.23, 207.24, and 210.12(d).

It is also proposed that prehearing briefs in 120-day final dumping or countervailing duty investigations be filed 10 days after service of the prehearing staff report. The current provision for 15 days appears to consume too large a portion of the final 45 days of an investigation. It further appears that, given their knowledge of the facts and issues in each case, the change should cause relatively little hardship on the parties. This change would be reflected in § 207.22.

PREPARED TESTIMONY

Given the apparently redundant nature of prepared testimony, as that term is currently used in Commission practice, the Commission is proposing to abolish prepared testimony in antidumping and countervailing duty cases. Although parties would be encouraged to have carefully prepared remarks ready for the Commission's hearing, a prohibition on prepared testimony would do away with lengthy documents, which could not be covered during the course of a hearing and which appear to be more like an additional prehearing brief rather than testimony.

The Commission is also proposing an exception to the rule to permit participants in a hearing to present graphs or other explanatory material to illustrate an argument or to clarify a matter in contention. A limit of five double-spaced pages is proposed.

Finally, it is proposed that each party submit a list of the witnesses it plans to call to testify at the hearing at least 3 business days before the hearing.

These changes would be accomplished by amendments to § 201.12(d).

DATE OF INSTITUTION OF FINAL INVESTIGATION

It is proposed that the date established by the Trade Agreements Act for the institution of final countervailing duty or antidumping investigations be deemed the date on which the transmittal from the administering authority is received by the Secretary or the date on which the determination is published in the *Federal Register*, whichever occurs first. This proposal would be made by adding a new § 207.20(a) and redesignating the current § 207.20(a) as § 207.20(b).

APPEARANCE AT HEARINGS

The Commission proposes that, to eliminate ambiguity, the material regarding hearings in § 201.13 be revised and relocated in § 201.12(d). It is also proposed to state explicitly that the Chairman or the presiding officer at the hearing may determine who may appear. In cases where persons other than parties wish to appear, the Chairman could decide whether a sufficient showing of interest has been made. In certain cases—the appearance of Members of Congress, representatives of other Government agencies, and interested parties—this sufficient interest should be presumed. This proposal will be carried out by adding a new § 201.12(j) based on the current language in § 201.13.

RECOMMENDATION BY THE DIRECTOR OF OPERATIONS

The Commission proposes to amend § 207.16, which specifies that the Director of Operations will make a recommendation in preliminary antidumping and countervailing duty investigations. The rule was originally drafted because a recommendation was thought useful, since the Director of Operations conducts the preliminary investigation and is closest to it. The Commission no longer believes the formal recommendation is necessary. Thus, the proposed rule would only require the Director of Operations to prepare for the Commission a written summary of the information and arguments submitted by the parties at, or prior to, the conference, if one is held. This procedure will retain the advantage of having the person closest to the conference highlight the issues and the critical facts of record, without the need to form preliminary legal conclusions for the Commission. No comments were received regarding this proposal.

However, several comments urged the Commission to retain the general delegation to the Director of Operations of the duty to conduct preliminary investigations. The comments argued that due to the professionalism of the Commission's staff, the short time limits involved, and the fact that the preliminary determination of reasonable indication of injury does not result in final Commission action, the procedure is appropriate and efficient. In general, the Commission finds these comments persuasive and does not now propose to change the general delegation to the Director of Operations.

SERVICE OF DETERMINATIONS

It is proposed that §§ 207.18 and 207.28 be amended to require that the Secretary "serve" all parties with copies of Commission actions.

PROTECTIVE ORDERS; IN-HOUSE COUNSEL

Section 777 of the Tariff Act of 1930 (19 U.S.C. 1677f) deals with confidential business information. Subsection (b) provides that information submitted to the Commission in confidence may not be released by the Commission without the consent of the submitter. Subsection (c), however, permits the release of confidential information under protective order, and authorizes the Commission to establish such requirements as it may determine by regulation to be appropriate to control such disclosure. Pursuant to this authority, the Commission promulgated § 207.7 of its Rules of Practice and Procedure (19 CFR 207.7). This section has functioned very well, except for extensive criticism of the provision limiting access to confidential information to retained counsel.

Section 207.7 is designed to provide carefully limited access to confidential information by attorneys representing parties to Title VII investigations. The underlying purpose of § 207.7 is to permit counsel to present arguments to the Commission based on certain confidential price information, in addition to the information available in the public record. The Commission sought to preserve the integrity of that confidential information by insuring that it not be made available to the business competitors of the submitter. That is, the information would be made available to the attorney but not to the client. Therefore, in order to insure an "arm's length" relation between attorney and client, the Commission elected to prohibit the disclosure of information under protective order to "in-house counsel"—not because of distrust, but because the attorney may be, by virtue of his corporate position, the client. In addition, the Commission believes that shielding the confidential business information of a submitter from its competitors encourages voluntary compliance with Commission questionnaires and other requests for information.

The limitation was criticized by law departments of many corporations and several bar associations. Many comments stated that all attorneys, whether employed by corporations or by law firms, are members of the bar. All attorneys are subject to the highest standards of professional responsibility, and are subject to disciplinary proceedings by the appropriate licensing authorities for any breach of those standards. Failure to abide by the provisions of a protective order is clearly a ground for instituting disciplinary proceedings.

These comments are very persuasive. The Commission, in originally proposing and promulgating § 207.7, did not mean to imply that corporate counsel are in any way less trustworthy or professional

than retained counsel. It meant no disparagement of attorneys who are staff employees of corporations. As several comments stated, this is a distinguished segment of the bar, and many of the foremost attorneys in this country are employees of respected corporations.

As a result of those comments, the Commission has undertaken a search for a workable alternative to the current language. In its notice of August 27, 1980 (45 FR 57148), the Commission proposed a new standard for release of information under protective order, one which eliminated the distinction between in-house and retained counsel. It was proposed to limit disclosure to those counsel, corporate or retained, who do not advise "operating departments."

This proposal was criticized as vague and unworkable, since the term "operating departments" does not provide meaningful guidance; there would be inevitable disputes over what constitutes an operating department. The Commission has found this argument persuasive, and for this reason has not proceeded with the proposal. As a result, the Commission did not need to evaluate the merits of other objections to the proposed rule, and is exploring alternatives.

In so doing, the Commission's goals remain unchanged: (i) To gather the confidential business information needed in the course of its investigations; (ii) to scrupulously protect that confidentiality; and (iii) to encourage the voluntary submission of such information. In addition, because the time limits imposed by statute for these investigations are so short, usually 45 or 120 days, the rule should be self-executing. The Commission fears that it might not have time to conduct a proceeding and reach an informed, reasoned determination as to who should have access to confidential information under a protective order. Most important, the final formulation must insure that persons who have access to the information will not, even inadvertently, permit confidential information to be made available to their clients.

Thus, the issue faced by the Commission has nothing to do with the professionalism, trustworthiness, and ethics of one segment of the legal profession as compared with another; rather, the central issue is how best to guard against potential improper use of information. The Commission's task, therefore, is one of separating two distinct functions: that of legal advisor and that of corporate official. When the attorney is acting as an official of the client, instead of its legal advisor, the efficiency of the protective order is greatly diminished or nullified. Since no person can completely compartmentalize relevant information, it would be illusory to expect any person with access to confidential business data of another to be able to disregard that information

when giving advice. Even the refusal to give advice could be a meaningful statement.

In this context, several comments noted that the very fact that corporate attorneys are employed full time by their clients lends itself to potential misuse of critical information. In-house counsel meet regularly with the personnel of the corporation on day-to-day matters and may, no matter how inadvertently, use the information in a context other than that of antidumping or countervailing duty investigations. This problem may reach critical proportions when in-house counsel, after receiving a competitor's confidential pricing information, is consulted on his own firm's pricing decisions.

Therefore, the Commission proposes a protective order rule which permits access to confidential information under protective order by any attorney, whether corporate counsel or retained counsel, who certifies under oath to the Commission that, in addition to the other protective order restrictions, he does not participate in the determination of the price of his client's products nor give advice regarding the pricing of his client's products. Because the confidential information generally released in these investigations relates to domestic prices, access to pricing information under protective order would be inconsistent with the protection of confidential information when the attorney advises on pricing decisions.

This formulation appears to offer several advantages. First, it is self-executing. Second, it is directed specifically at shielding that information which is actually released by the Commission under protective order and which is considered most sensitive—prices. Finally, it is an unambiguous formulation, providing a bright-line distinction that is immediately understood. The specific language appears in the proposal.

The Commission is considering three alternatives to this proposal. Depending on comments from the public and its own analysis, the Commission will select one of the four for its final rule. For ease of discussion, we will refer to the Commission's proposal as alternative A. The others will be denominated alternative B, alternative C, and alternative D.

Alternative B. This alternative would retain the current prohibition on the release of confidential business information to in-house counsel. The only change would be to redesignate "in-house counsel" as "corporate counsel." In other words, current practice would be retained.

Alternative C. This alternative would eliminate the phrase "except in-house counsel." Any attorney would be entitled to access to confidential business information under protective order without regard to his relation to his client.

Alternative D. This alternative, even though it does not appear to conform to the goal of being self-executing, was suggested in a written submission to the Commission by an attorney representing numerous corporate counsel. It would permit access to confidential business information by any attorney unless a submitter of information objected. The person resisting disclosure would need to make a clear showing of a particular competitive injury resulting from disclosure, in which case the Commission may impose additional conditions upon disclosure. This proposal would be carried out by amending § 207.7(a), adding § 207.7(c), and by redesignating §§ 207.7(c)–(e) as §§ 207.7(d)–(f), as follows:

§ 207.7 LIMITED DISCLOSURE . . .

(a) *In general.* Upon request of an attorney of record of a party to the investigation . . . which describes with particularity the information requested, . . . the Secretary will make available confidential information concerning the domestic price and cost of production of the like product submitted by the petitioner or an interested party in support of the petitioner to such attorney under a protective order described in paragraph (b), subject to such restrictions as the Commission may impose under paragraph (c). Such requests shall name every attorney and every person described in subsection (1)(iv) of paragraph (b) to whom such information will be disclosed and a copy of such request shall be served upon the petitioner or interested party whose confidential information is requested in the manner prescribed in § 201.16. Upon filing with the Secretary of an agreement . . .

* * * * * * *

(c) *Additional restrictions on disclosure.* Within five days of the date of service of a request for disclosure of confidential information under paragraph (a), the petitioner or interested party whose confidential information is sought may petition the Commission for an order denying disclosure of specifically identified information to any individual named in the request. If the party resisting disclosure makes a clear showing that it risks a particularized competitive injury as a result of disclosure of such specifically identified information to the challenged individual and the Commission finds the provisions of paragraph (b) to be inadequate as to such individual, the Commission may deny, limit, or impose additional conditions upon the disclosure of such information to such individual.

The Commission specifically requests public comments on each of the four proposals in light of the criteria set forth above.

(19 CFR Part 201 and Part 207)

PROPOSED REVISIONS TO THE GENERAL PROCEDURES FOR THE CONDUCT OF INVESTIGATIONS AND THE SPECIFIC PROCEDURES FOR THE CONDUCT OF INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

1. Section 201.2 is amended by adding paragraph (i) to read as follows:

§ 201.2 DEFINITIONS.

* * * * * * *

(i) Except for adjudicative investigations under subchapter C of this chapter, "party" means any person whose notice of appearance has been accepted pursuant to § 201.13(a) or (c). The person who files a complaint or petition on the basis of which an investigation is instituted is hereby deemed a party.

2. In § 201.8, paragraph (d) is revised to read as follows:

§ 201.8 FILING OF DOCUMENTS.

* * * * * * *

(d)(1) *Number of copies.* Except as provided in § 210.10(a), a signed original and fourteen (14) copies of each document shall be filed. In the event that confidential treatment of the document is requested under § 201.6, at least one additional copy shall be filed, in which copy the confidential business information shall have been deleted and which shall have been marked conspicuously "nonconfidential" or "public inspection." The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(2) Except as provided in § 210.10(a), a copy of a petition or complaint, or a nonconfidential version thereof, shall also be served by messenger or by first-class mail on each person alleged therein to be committing the acts complained of. Such service shall be attested by a certificate of service as required in § 201.16(b) and (c).

3. Section 201.12 is amended by revising paragraph (d) and by adding paragraph (j) to read as follows:

§ 201.12 CONDUCT OF NONADJUDICATIVE HEARINGS.

* * * * * * *

(d) *Witness lists and prepared testimony*—(1) *Parties. List of Witnesses.* Each party shall file with the Secretary a list of the witnesses it intends to call to testify at the hearing not less than three (3) business days prior to the hearing, unless the Commission

establishes a different date for such submission in its notice of hearing.

(2) *Nonparties.* Persons other than parties who wish to testify at hearing are requested to so notify the Secretary.

(3) *Supplementary material.* Up to five double-spaced pages of supplementary material, other than remarks read into the record, will be accepted for the record. Supplementary material exceeding five pages may be accepted upon a showing of such cause as may be deemed sufficient by the Chairman or other presiding official at the hearing.

* * * * * * *

(j) *Appearance at a hearing*—(1) *Who may appear.* A party may appear at the hearing either in person or by representative. A nonparty who has testimony or arguments that may aid the Commission's deliberations may also appear under such conditions as may be established by the Chairman or presiding officer at the hearing.

(2) *Requests to appear.* Requests to appear shall be filed with the Secretary. Requests shall be filed at least three (3) days in advance of the date set for hearing or by the date set in the notice of the investigation for a preliminary conference whichever shall first occur, except that the Chairman, or presiding officer at the hearing, may waive this requirement for good cause. Witnesses on behalf of persons requesting to appear need not file separate requests to appear.

4. Section 201.13 is revised to read as follows:

§ 201.13 PARTICIPATION IN AN INVESTIGATION AS A PARTY.

(a) *Who may participate.* Any interested person may participate in an investigation as a party, either in person or by representative, by filing a notice of participation with the Secretary. Each notice of participation shall (1) state briefly the nature of person's interest in the subject matter of the investigation and (2) state the person's intent to file briefs with the Commission regarding the subject matter of the investigation. Each notice of participation shall be forwarded to the Chairman or other person designated to conduct the investigation, who shall promptly determine whether the person submitting the notice of participation has a proper interest in the investigation. If it is found that a person does not have a proper interest in the investigation, that person shall be so notified by the Secretary.

(b) *Time for filing.* Each notice of participation must be filed (1) not later than twenty-one (21) days prior to the date of the hearing, or (2) not later than twenty-one (21) days prior to the date established for filing the first prehearing brief, or (3) in the event that the Commission schedules a prehearing conference, not later than such conference or at such conference, whichever shall first occur.

(c) *Late filing.* Any notice of participation filed with the Secretary after the filing date established in § 201.13(b) shall be referred to the Chairman, who shall determine whether to accept such notice for good cause shown by the person desiring to file

the notice. The Secretary shall promptly notify the submitter of the decision.

5. In § 201.16, paragraphs (b) and (c) are revised to read as follows:

§ 201.16 SERVICE OF PROCESS AND OTHER DOCUMENTS.

* * * * * * *

(b) *By a party other than the Commission.*

(1) * * *

(3) When service is by mail, it is complete upon mailing of the document.

(c) *Proof of service; certificate.* Each document served by a party shall include a certificate of service, setting forth the manner and date of such service. The certificate of service shall be deemed proof of service of the document. In the event a document is not accompanied by a certificate of service, the Secretary shall not accept such document for filing and shall promptly notify the offering party.

6. In § 207.2, paragraph (i) is removed and paragraph (j) is redesignated as paragraph (i).

7. In § 207.7, paragraph (a) is revised to read as follows:

§ 207.7 LIMITED DISCLOSURE OF CERTAIN CONFIDENTIAL INFORMATION UNDER A PROTECTIVE ORDER.

(a) Upon request of an attorney of an interested party to the investigation, who certifies under oath that he does not participate in the determination of the prices of his client's products and that he does not give advice regarding the pricing of his client's products, which request (1) describes with particularity the information requested, (2) sets forth the reasons for the request, (3) demonstrates a substantial need for the information in the preparation of his case, and (4) demonstrates that he is unable without undue hardship to obtain the substantial equivalent of the information by other means, the Secretary will make available confidential information concerning the domestic price and cost of production of the like product submitted by the petitioner or by an interested party in support of the petitioner to such attorney under a protective order described in paragraph (b).

* * * * * * *

8. Section 201.10 is revised to read as follows:

§ 207.10 FILING OF PETITION WITH COMMISSION.

Any interested party who files a petition with the administering authority pursuant to section 702(b)(1) or 732(b)(1) of the Act shall, in accordance with section 702(b)(2) or 732(b)(2) of the Act, file copies of the petition, pursuant to § 201.8, with the Secretary on the same day the petition is filed with the administering authority. If the petition complies with the provisions of § 207.11, it will be deemed to be properly filed on the date on which the requisite number of copies of the petition is received by the Secretary. The Secretary shall notify the administering authority of that date.

9. Section 207.16 is revised to read as follows:

§ 207.16 SUMMARY OF CONFERENCE.

The Director shall prepare for the Commission a summary of the information and arguments submitted by the parties in connection with the conference, if one is held.

* * * * * * *

10. Section 207.15 is revised to read as follows:

§ 207.15 WRITTEN BRIEFS AND CONFERENCE.

Any person may submit to the Commission on or before a date specified in the notice of investigation issued pursuant to § 207.12 a written brief containing information and arguments pertinent to the subject matter of the investigation.

* * * * * * *

11. Section 207.18 is revised to read as follows:

§ 207.18 NOTICE OF PRELIMINARY DETERMINATION.

The Secretary shall serve copies of the Commission's preliminary determination under section 703(a) or 733(a) of the Act and of the facts and conclusions of law upon which the determination is based on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish a notice of such determination in the *Federal Register*.

* * * * * * *

12. Section 207.20 is amended by redesignating the present text as paragraph (b) and adding paragraph (a) to read as follows:

§ 207.20 INSTITUTION OF INVESTIGATION; NOTICE.

(a) Notice from the administering authority of an affirmative preliminary determination under section 703(b) or 733(b) of the Act and notice from the administering authority of an affirmative final determination under section 705(a) or section 735(a) of the Act shall be deemed to occur on the date on which the transmittal letter of such determination is received by the Secretary from the administering authority or the date on which notice of such determination is published in the Federal Register, whichever shall first occur.

13. Section 207.22 is revised to read as follows:

§ 207.22 PREHEARING BRIEF.

Within ten (10) days after the date of service of the public portion of the staff report by the Commission to the parties, each party may submit to the Commission a prehearing brief. A prehearing brief shall, to the extent possible, refer to the record and shall include:

* * * * * * *

14. In § 207.23, paragraph (b) is revised to read as follows:

§ 207.23 HEARING.

* * * * * * *

(b) *Procedures.* Any such hearing shall be conducted after notice published in the Federal Register. The hearing shall not be subject to the provisions of subchapter II, chapter 5, title 5, United States Code, or to section 702 of that title. Each party shall limit its presentation at the hearing to a nonconfidential summary of the information and arguments contained in its prehearing brief, to a nonconfidential analysis of the information and arguments contained in the prehearing briefs required by § 207.22, and to information not available at the time its prehearing brief was filed.

* * * * * * *

15. Section 207.24 is revised to read as follows:

§ 207.24 POSTHEARING BRIEFS.

Posthearing briefs concerning the information adduced at the hearing may be filed with the Secretary within a time specified by the official presiding at the hearing, provided that no such posthearing brief shall exceed ten (10) pages of textual material, double spaced, on stationery measuring 8½ x 11 inches. In addition, the presiding official may permit persons to file within a specified time answers to questions or requests made by the Commission at the hearing. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this rule.

16. Section 207.28 is revised to read as follows:

§ 207.28 PUBLICATION OF NOTICE OF DETERMINATION.

Whenever the Commission makes a final determination under section 303 or title VII of the Act, the Secretary shall serve the determination and the facts and conclusions of law upon which the determination is based on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish notice of such determination in the Federal Register.

17. In § 210.10, paragraph (a) is revised to read as follows:

§ 210.10 COMMENCEMENT OF PROCEEDINGS.

(a) *Upon receipt of complaint.* A proceeding is commenced by filing with the Secretary to the Commission the original and fourteen (14) true copies of a complaint, plus one copy for each person named in the complaint as violating section 337 of the Tariff Act.

* * * * * * *

By order of the Commission.

Issued: May 20, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN WET MOTOR CIRCULATING PUMPS AND COMPONENTS THEREOF	Investigation No. 337–TA–94

Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 9:00 a.m. on June 29, 1981, in the Dodge Center, Room 201, 1010 Wisconsin Avenue N.W., Washington, D.C., and the hearing will commence immediately thereafter.

The purpose of the prehearing conference is to review the trial memoranda submitted by the parties, to stipulate exhibits into the record, and to discuss any questions raised by the parties relating to the hearing.

The Secretary shall publish this notice in the Federal Register.

Issued: May 21, 1981.

JANET D. SAXON,
Administrative Law Judge.

In the Matter of CERTAIN THERMAL CONDUCTIVITY SENSING GEM TESTERS AND COMPONENTS THEREOF	Investigation No. 337–TA–100

Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: May 22, 1981.

DONALD K. DUVALL,
Chief Administrative Law Judge.

In the Matter of CERTAIN WHEEL LOCKS AND COMPONENTS THEREOF	Investigation No. 337–TA–102

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 16, 1981 and

amended on May 4, 1981, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of McGard, Inc., 852 Kensington Avenue, Buffalo, New York 14215. The complaint alleges unfair methods of competition and unfair acts in the importation of certain wheel locks and components thereof into the United States, or in their sale, by reason of alleged (1) infringement by said wheel locks of the claims of U.S. Letters Patent 3,241,408, (2) palming off, and (3) false designation of origin. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation; conduct an expedited hearing to determine whether there is reason to believe that there is a violation of section 337; upon the conclusion of said expedited hearing, issue a temporary cease and desist order and a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, during this investigation; and, after a full investigation, issue an exclusion order prohibiting the importation of said articles from entry into the United States and a cease and desist order.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure.

SCOPE OF THE INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on May 13, 1981, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is reason to believe that there is a violation and whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain wheel lock combinations and components thereof into the United States, or in their sale, by reason of (1) alleged infringement by said wheel lock combinations and the wheel locks themselves of the claims of U.S. Letters Patent 3,241,408, (2) alleged palming off, and (3) alleged false designation of origin, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is——
McGard, Inc.
852 Kensington Avenue
Buffalo, New York 14215

(b) The respondents are the following persons, alleged to be in violation of section 337, and are parties upon whom the complaint is to be served:

Kyo-Ei Industrial Corp.
41 Nishi-Shimizumachi
Minami-Ku
Osaka, Japan

Mackin Industries
17727 Susana Road
Compton, California 90221

Superior Industries International Inc.
7800 Woodley Avenue
Van Nuys, California 91405

Custom Plating Corp.
C–P Auto Production Division
1636 Bonnie Beach
Los Angeles, California 90063

(c) M. Brooke Murdock, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation;

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

(4) With respect to the complainant's request for expedition of the temporary relief hearing, action on such request is deferred to the presiding officer.

The phrase "wheel lock combinations" has been used in paragraph (1) above on the basis that the claims 1–4 in U.S. Letters Patent 3,241,408 are directed to a wheel lock and claims 5–8 of said patent are directed to the wheel lock in combination with a wrench that cooperates therewith. The latter combination is referred to as "wheel lock combinations."

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(b) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter

both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: M. Brooke Murdock, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0113.

By order of the Commission.

Issued: May 22, 1981.

KENNETH R. MASON,
Secretary.

(19 CFR Part 200)

Amendment to Agency Ethics Rules

AGENCY: U.S. International Trade Commission.

ACTION: Notice of proposed rule.

SUMMARY: In order to promote the orderly and efficient conduct of its investigations, the Commission proposes to amend its ethics regulations to allow employees to accept ground transportation in kind, of nominal value, in the course of investigative field trips, from representatives of the industry being investigated.

DATE: Comments must be received by July 15, 1981.

ADDRESS: Comments may be submitted to Michael H. Stein, General Counsel, USITC Ethics Counselor, U.S. Interntional Trade Commission, 701 E Street, NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Michael B. Jennison, Esq., Deputy Ethics Counselor, Office of the General Counsel, 701 E Street, NW., Washington, D.C. 20436, 202–523–0350.

SUPPLEMENTARY INFORMATION: Executive Order 11222, 3 CFR 306 (1965 Compilation), prohibits Government employees from soliciting or accepting anything of monetary value from any person or corporation that conducts operations or activities regulated by his or her agency, or that has interests that may be substantially affected by performance or nonperformance of official duty. The Order provides, however, that "[A]gency heads are authorized to issue regulations . . . to provide for such exceptions therein as may be necessary and appropriate in view of the nature of their agency's

work and the duties and responsibilities of their employees." The order specifies that agency heads may, for example, permit acceptance of food and other refreshments in the ordinary course of luncheon meetings or on inspection tours. The Commission has long included this exception in its ethics rules. 19 CFR § 200.735–105(b)(2).

The Commission now proposes to alter this exception to allow employees to accept ground transportation of nominal value during the course of investigative field trips. From time to time Commissioners and investigative staff members have need to visit production or manufacturing facilities, distribution centers, or offices of participants in Commission investigations. Field trips are an invaluable, cost-effective adjunct to hearings, questionnaires, and other data gathering methods in helping the Commission gauge the economic impact of imports on domestic industries. Occasionally in the course of field trips, scheduling is tight, the investigator is pressed for time, and the office or facility to be visited is not convenient to public transportation. Allowing employees to accept, for example, a ride in a company car or van from a suburban plant to the airport at the conclusion of an inspection tour may allow more time to see the facility and question officials—perhaps even continuing en route—and avoid the awkward problem of reimbursing the company for the value of the transportation. The Commission feels this is a necessary and appropriate exception to the general prohibition and that no possible appearance of conflict of interest can arise from it. It will apply equally to field trips to facilities of any participant in an investigation; the employee receives nothing of personal value because any transportation expense incurred would be reimbursed by the government; and conversations en route, subject to all *ex parte* rules and investigative record-keeping requirements, are no different in character from any conducted in plants and offices or during luncheon meetings.

The U.S. International Trade Commission proposes to amend 19 CFR § 200.735–105 to read as follows:

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept . . . any gift . . . or any other thing of monetary value from any person who:

* * * * * * *

(2) Conducts operations or activities that are being investigated by the Commission . . . .

(b) The prohibitions set forth under paragraph (a) of this section shall not apply to:

* * * * * * *

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner

meeting or other meeting or on a field trip, *and of ground transportation of nominal value in the course of a field trip*, where an employee may properly be in attendance . . . .

Issued: May 27, 1981

KENNETH R. MASON,
Secretary.

Notice of Investigation and Hearing

(TA–203–9)

CERTAIN MUSHROOMS

AGENCY: United States International Trade Commission.

ACTION: Following receipt of a request from the U.S. Trade Representative on May 19, 1981, the Commission on May 28, 1981, instituted investigation No. TA–203–9 under section 203(i)(2) of the Trade Act of 1974 (19 U.S.C. 2253(i)(2) for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the domestic industry concerned of the termination of certain of the import relief presently in effect (as specified in the attached letter) with respect to mushrooms, prepared or preserved, provided for in item 144.20 of the Tariff Schedules of the United States (TSUS). Such import relief is provided for in Presidential Proclamation 4801 of October 29, 1980 (45 F.R. 72617).

EFFECTIVE DATE: May 28, 1981.

FOR FURTHER INFORMATION CONTACT: Tim McCarty (202–724–1753).

SUPPLEMENTARY INFORMATION:

Public hearing ordered. A public hearing in connection with this investigation will be held in Washington, D.C., at 10 a.m., e.d.t., on Thursday, July 30, 1981, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW. Requests for appearances at the hearing should be received in writing by the Secretary to the Commission at his office in Washington, no later than the close of business Monday, July 13, 1981.

Prehearing procedures. To facilitate the hearing process, it is requested that persons wishing to appear at the hearing submit prehearing briefs enumerating and discussing the issues which they wish to raise at the hearing. Nineteen copies of such prehearing briefs should be submitted to the Secretary to the Commission no later than the close of business Monday, July 20, 1981. Copies of any prehearing briefs submitted will be made available for public inspection in the Office of the Secretary. While submission of prehearing briefs does not prohibit submission of prepared statements in accordance with

section 201.12(d) of the Commission's *Rules of Practice and Procedure* (19 CFR 201.12(d)), it would be unnecessary to submit such a statement if a prehearing brief is submitted instead. Oral presentations should, to the extent possible, be limited to issues raised in the prehearing briefs.

A prehearing conference will be held on Wednesday, July 15, 1981, at 10:00 a.m., e.d.t., in Room 117 of the U.S. International Trade Commission Building.

Persons not represented by counsel or public officials who have relevant matters to present may give testimony without regard to the suggested prehearing procedures outlined above.

By order of the Commission.

Issued: May 28, 1981.

KENNETH R. MASON,
Secretary.

U.S. TRADE REPRESENTATIVE,
Washington, D.C., May 14, 1981.

Hon. BILL ALBERGER,
International Trade Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: On October 29, 1980, President Carter proclaimed import relief for the domestic mushroom industry and increased the duty for 3 years on imports of prepared or preserved mushrooms classified under item 144.20 of the Tariff Schedules of the United States.

Subsequent to this action, the Governments of Canada, West Germany, and Switzerland and the Commission of the European Communities (on behalf of France) requested exemptions from the increased duty for certain of their mushroom products. These governments argue that their products have special characteristics which remove them from competition with mushrooms produced in the United States. The products for which exemptions have been requested include three types:

1. Frozen battered or breaded mushrooms which are currently imported from Canada. They are processed by washing whole, fresh (usually button) mushrooms, dusting them with flour, and dipping them in batter or bread crumbs. The mushrooms are then deep-fried just long enough to set the batter (approximately 25–30 seconds), frozen, and packed in 4-pound containers. The product is used in restaurants and other institutions, where it is served as a side dish.

2. Mushrooms valued at over $1.60 per pound (drained weight) of the following genera: champignon de Paris (*Psalliota*), chanterelle (*Cantharellus*), cepe (*Boletus*), morel (*Morchella*), and mixed mush-

rooms (*Boletus Luteus, Lactarius Deliciosus, Rozites Caperata, Suillus Grevillei,* and *Suillus Granulatus*). Champignon de Paris are cultivated commercially. Chanterelle, cepe, morel, and mixed mushrooms are harvested from their natural environment in forest areas, principally in Europe.

3. Mushrooms valued over $8.50 per pound (drained weight) of the genus chanterelle (*Cantharellus*) which are harvested solely from their natural environment in forest areas.

In addition, on April 8, I received a letter from the Association of Food Distributors requesting that oriental mushrooms also be exempted from the increased duty on canned mushrooms. This request included straw mushrooms (*Volvariella Volvacea*), golden mushrooms (*Flammulina Velutipes*), oyster mushrooms (*Pleurotus Ostreatus*), and summer oyster mushrooms (*Pleurotus Abalon*).

To assist us in making a decision on how to respond in this matter, I am requesting under Section 203(i)(2) of the Trade Act of 1974, as amended, that the Commission advise the President of its judgment concerning the probable economic effect on the domestic mushroom industry of modifying the import relief to exclude the products cited above. The Commission's advice also should include assessments of:

(1) the extent to which these products compete with domestically-produced mushrooms and mushroom products currently benefiting from the relief action;

(2) an estimate of imports of these products which could be expected over the 3-year period of import relief if they are exempted from the increased duties;

(3) the technical and administrative feasibility of identifying such mushrooms for separate Customs treatment; and

(4) the extent to which mushroom exporting countries may use the tariff exemption on each of these products to circumvent the import relief program.

It would be helpful if the Commission's advice could be submitted as soon as possible, but not later than July 31, 1981.

Very truly yours,

WILLIAM E. BROCK.

Investigation No. TA-203-8

HIGH-CARBON FERROCHROMIUM

Notice of Investigation and Hearing

AGENCY: United States International Trade Commission.

ACTION: Upon its own motion and on the basis of a petition filed on May 15, 1981, on behalf of the Committee of Producers of High-Carbon Ferrochromium (CPHCF), the Commission on May 27, 1981, instituted investigation No. TA–203–8 under sections 203(i)(2) and 203(i)(3) of the Trade Act of 1974 (19 U.S.C. 2253(i)(2) and (i)(3)) for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the industry concerned of the extension, reduction, or termination of import relief presently in effect with respect to ferrochromium, containing over 3 percent by weight of carbon, valued less than 38 cents per pound, provided for in item 606.24 (formerly item 607.31) of the Tariff Schedules of the United States (TSUS). Relief in the form of a temporary duty increase described in item 923.18 of the Appendix to the TSUS is provided against imports in Presidential Proclamation 4608 (issued November 15, 1978, 43 F.R. 53701). Import relief presently in effect with respect to such merchandise is scheduled to terminate at the close of business on November 15, 1981, unless extended by the President.

EFFECTIVE DATE: May 27, 1981.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake, Investigator, telephone (202–523–4618), U.S. International Trade Commission, Room 349, 701 E Street, NW., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION:

Public hearing ordered. A public hearing in connection with this investigation will be held in Washington, D.C., at 10 a.m., e.d.t., on Wednesday, July 22, 1981, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW. Requests for appearances at the hearing should be received in writing by the Secretary to the Commission at his office in Washington no later than the close of business on Wednesday, July 1, 1981.

Prehearing procedures. To facilitate the hearing process, it is requested that persons wishing to appear at the hearing submit prehearing briefs enumerating and discussing the issues which they wish to raise at the hearing. Nineteen copies of such prehearing briefs should be submitted to the Secretary to the Commission no later the close of business on Friday, July 10, 1981. Copies of prehearing briefs submitted will be made available for public inspection in the Office of the Secretary. While submission of prehearing briefs does not prohibit submission of prepared statements in accordance with section 201.12(d) of the Commission's *Rules of Practice and Procedure* (19 CFR 201.12(d)), it would be unnecessary to submit such a statement if a prehearing brief is submitted instead. Oral presen-

tations should, to the extent possible, be limited to issues raised in the prehearing briefs.

A prehearing conference will be held on Thursday, July 2, 1981, at 10:00 a.m., e.d.t., in Room 117 of the U.S. International Trade Commission Building.

Persons not represented by counsel or public officials who have relevant matters to present may give testimony without regard to the suggested prehearing procedures outlined above.

Inspection of petition. The petition filed in this case is available for public inspection at the Office of the Secretay, U.S. International Trade Commission.

By order of the Commission.

Issued: May 28, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN HOT AIR CORN POPPERS AND COMPONENTS THEREOF } Investigation No. 337–TA–101

Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: May 29, 1981.

DONALD K. DUVALL,
Chief Administrative Law Judge.

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